POLICY Review

AUGUST & SEPTEMBER 2000, NO. 102

BRING BACK THE LAXALT DOCTRINE
JOHN R. BOLTON

DEATH BY DIETARY SUPPLEMENT
HENRY I. MILLER AND DAVID LONGTIN

THE "CHINESENESS" OF TAIWAN
ARTHUR WALDRON

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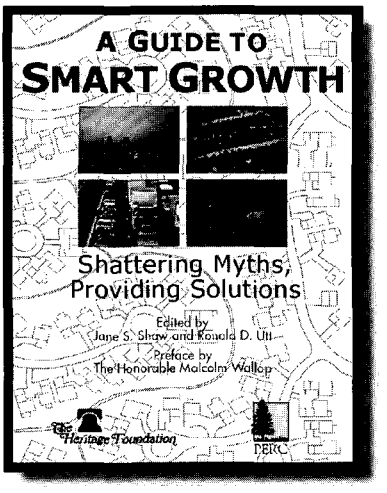

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Features

3 BRING BACK THE LAXALT DOCTRINE
Sometimes there's a better way to get rid of dictators
John R. Bolton

15 DEATH BY DIETARY SUPPLEMENT
How to regulate a booming industry
Henry I. Miller and David Longtin

27 THE "CHINESENESS" OF TAIWAN
Chen Shuibian's impressive start
Arthur Waldron

41 JUSTICE TO GEORGE S. SCHUYLER
A forgotten black journalist
Mark Gauvreau Judge

49 RUSSIA'S DYSFUNCTIONAL MEDIA CULTURE
Why U.S. assistance isn't working
Herman J. Obermayer

Books

63 THE POLITICS OF THE SUPREME COURT
Keith E. Whittington on **The Warren Court and American Politics** *by* Lucas A. Powe Jr.

70 WOMEN AT ARMS
Lee Bockhorn on **The Kinder, Gentler Military: Can America's Gender-Neutral Fighting Force Still Win Wars?** *by* Stephanie Gutmann *and* **Breaking Out: VMI and the Coming of Women** *by* Laura Fairchild Brodie

78 THE *TIMES* OF OUR TIMES
Woody West on **The Trust: The Private and Powerful Family Behind the New York Times** *by* Susan E. Tifft *and* Alex S. Rose

84 THE SURPRISING ROOTS OF FASCISM
Arnold Beichman on **The Two Faces of Janus: Marxism and Fascism in the Twentieth Century** *by* A. James Gregor

86 NEARER MY GOD TO ME
Damon Linker on **The Genesis of Justice: Ten Stories of Biblical Injustice that Led to the Ten Commandments and Modern Law** *by* Alan M. Dershowitz

Letters

93 Medical marijuana works, farmers and food prices

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Bring Back the Laxalt Doctrine

By JOHN R. BOLTON

IN THE ABSENCE of a clearly defined major threat to the United States — a central characteristic of the contemporary post-Cold War world — American foreign policy has drifted in recent years. Predictably, competing schools of thought have emerged debating what America's priorities should be, reflecting widely varying underlying philosophies about our basic national interests and values. It is no exaggeration to assert that, in today's relative tranquility (relative, at least, compared with the Cold War), many previously undistinguished and truly marginal alternative foreign policies have emerged into the center of our national consideration. Issues and problems that had no chance of commanding the attention of high-level decision makers before the collapse of communism now receive active scrutiny and debate. This is certainly true in the United States, but it is perhaps even more common in other nations that never bore the heaviest burden of defending the West, and hence are quicker to lay aside its disciplines in the pursuit of other priorities.

To identify this phenomenon, of course, is neither to imply that it is desir-

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able nor to accept its tacit rationale — that there are no more major threats to the United States (such as the proliferation of weapons of mass destruction, or the emergence of more classic potential adversary regimes such as the People's Republic of China). Nonetheless, it would be foolhardy for practitioners and scholars to ignore the increasing importance of issues previously considered to be minor, for several reasons. First, "principles" of international relations and patterns of conduct can emerge from the resolution of seemingly minor issues that have considerable implications for resolving "larger" issues at a later time. Second, the United States is far from immune to the effects of the habits of thinking of our closest allies, and we ignore any erosion of their loyalty to our priorities at our peril. Third, it may well be that what initially seems to be a "minor" issue can in fact develop into a major threat for the United States, so that no prudent analyst should reject such concerns entirely out of hand.

Dealing with undesirable regimes

ONE SUCH "MINOR" ISSUE that the United States confronts with increasing frequency today is the problem of undesirable, undemocratic regimes tenaciously and inconveniently clinging to power, and what to do about them. During the Cold War, when such regimes proliferated on both sides, America displayed a certain tolerance for authoritarian governments because it suited our larger anti-communist interests to do so. This tolerance was part of a larger pattern within our overall containment policy, which also included the rearming of Germany within the North Atlantic Alliance, and abandoning many reform priorities in Japan before they were completed in order to bring it back more quickly to productive status in America's Pacific orbit. While many found (and still find) such associations unseemly, successive American governments took the more realistic view that victory in the anti-communist free-for-all simply had a higher priority.

Even during the Cold War, of course, there were instances where unsavory but "pro-Western" regimes were corrupt, authoritarian, or otherwise undesirable, and where direct, East-West implications were either absent, or where the stakes were not consequential. In the most egregious such cases in years past, if American interests were directly affected, U.S. policy concentrated on eliminating or containing such regimes politically or covertly. For less pressing cases, or regimes that, while odious, were friendly to us, we generally left their futures to the citizens and political-legal processes of the nations themselves. In both contexts, we were typically indifferent as to whether the leadership of such undesirable regimes ended its days in villas on the Riviera, or before motley firing squads of their fellow citizens (or worse).

Of course, today, there are still undesirable governments that threaten

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American interests, such as Saddam Hussein in Iraq, or rogue regimes in Cuba, Libya, and North Korea. These are, quite simply, enemy states, although what the United States is actually able to do in these extreme cases is often quite limited. Nine years after the Gulf War, there is little doubt that toppling Saddam should have been an objective in 1991 while substantial U.S. armed forces were still on the scene, or thereafter by more actively supporting potential coup plotters or insurgent popular forces. North Korea's irrational regime, while perhaps now undergoing a change for the better in outlook, has long threatened its neighbors Japan and South Korea and, through its missile program, has increasingly posed a threat to the United States — justifying at least contemplation of preemptive action against it. Nonetheless, for reasons good and bad, eliminating such regimes may not be "doable" at an acceptable cost. Domestic American political opposition to more forward policies, or opposition from weak or fearful neighboring states may require us simply to live with the status quo, at least in the short term.

A far larger number of states do not directly threaten the United States, but are objectionable, in whole or in part, for any of several reasons, often including growing popular opposition to the regimes in their own countries. Recent examples include Gen. Raul Cedras in Haiti, President Alberto Fujimori in Peru, the Burmese military junta, the mullahs in Iran, Serbia's Slobodan Milosevic, and the extreme Islamicist government of Sudan. How to handle senior Indonesian military figures accused of war crimes in East Timor, such as former armed forces commander Gen. Wiranto, and even the proper treatment for Gen. Augusto Pinochet and his Chilean military colleagues, is also pertinent. Many of the same questions arise in the case of rebel groups within countries, such as the Revolutionary United Front in Sierra Leone, or the confused factional strife in Rwanda and Burundi. In earlier days, the outcomes for these regimes or factions would have been handled case by case, as their respective situations might have been assessed against larger American interests.

The lawless and international law

TODAY, HOWEVER, in the United States and Western Europe especially, "human rights" advocates have decided that the application of "international criminal law" against friend, foe, or neutral alike must be the universal rule. Under this theory, undesirable regimes are to be dealt with in a legal — rather than a primarily political — framework. They are, in virtually every case, to be relentlessly prosecuted to the fullest extent possible for "crimes against humanity," and there is to be "no impunity": no exemptions, no plea bargains, no pardons, and no amnesties. By overcoming "impunity" and prosecuting these vile leaders, it is said, their regimes can be toppled and the broader cause of justice advanced. Who exactly is to do the

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prosecuting is somewhat unclear; while theoretically, under this view, national judicial systems should be competent to handle prosecutions of their own citizens, almost invariably the "human rights" preference is for international tribunals (whether in the newly agreed International Criminal Court or in special tribunals created by the Security Council) to ensure that no tainted favoritism or political accommodation sullies the "no impunity" commandment. Moreover, who will actually fulfill the law enforcement role of apprehending and incarcerating the supposed criminals (i.e., who will take the real risks) is also typically left ambiguous.

This line of argument superficially appeals to Americans, for we are a traditionally law-abiding people who have historically yearned for unruly foreigners to behave themselves, according to our ways. How attractive it seems to postulate a politically neutral, globally accepted, international rule of law that will automatically function to punish the undesirables and protect the virtuous without the need for America being the world's policeman. Unfortunately, however, reality works differently. In practice, the developing "rule of law" in international affairs will have as much precedential impact on the United States as it does on truly undesirable leaders in undemocratic countries, and virtually all of it will be unhelpful from our perspective. Those in doubt need only recall the "war crimes" trials of Lyndon Johnson and others staged by Bertrand Russell and his fellow leftists during the Vietnam War. In fact, there is a hidden agenda shared by many international human rights activists that goes well beyond the prosecution of the undeniably undesirable: Ultimately, they aim at nothing less than making all national leaders — democratically elected or otherwise — "legally" accountable to their standards of international conduct.

The hidden agenda shared by many international human rights activists goes well beyond the prosecution of the undeniably undesirable.

Of course, law professors and other academics have created many of these "laws" and "standards" through their elucidation of "customary international law." Although nominally based on "state practice" — the actual behavior of nation-states over the years — customary international law today is said to evolve spontaneously, at least for those with the higher morality to see it clearly. Often, these standards are never subjected to actual democratic processes through adoption by national parliaments as positive domestic law. Even treaties, especially those dealing with "human rights," are frequently accepted as aspirations without the kind of scrutiny and debate, at least in the United States, that attaches to any serious revisions of domestic criminal law. Certainly this is the case with the lengthy declarations produced by the unending series of international conferences of the 1990s

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and earlier, and the mind-numbing production of resolutions by the U.N. General Assembly and other international organizations' governing bodies. Accordingly, these "international standards" typically turn out to be a collection of smoke and mirrors that can shift with miraculous speed depending on the underlying political agenda being pursued at the moment by the righteous. In fact, the fundamentally political nature of these standards both deprives them of the legitimacy their advocates crave and serves notice on the United States of the real underlying agenda.

In Cold War times and before, the broad American consensus was that, odious as undesirable (but nonthreatening) regimes might be, they usually did not rise to a level of concern warranting the risks and potential costs of outright U.S. military intervention to decapitate the regime. In an ironic sense, the prosecutorial option sounds more appealing for these petty tyrants because they are not as formidable as those with real military capabilities, and hence are less threatening and less dangerous. But simply indulging in high-minded generalities does not address the ultimately more important operational questions of apprehending those to be prosecuted, the pacification of their supporters (which will often require military means), and the administration of their prior fiefdoms until "real" democracy is established. Indeed, these practical concerns themselves stem directly from some of the most important philosophical and constitutional questions that, in the longer term, directly affect the United States.

The birth of the Laxalt Doctrine

A BETTER APPROACH, both for the United States and for the rest of the world, is to revive the Laxalt Doctrine, named in honor of one of its most successful practitioners, former Nevada Sen. Paul Laxalt, general chairman of Ronald Reagan's presidential campaigns, and Reagan's closest political ally. Laxalt, in close consultation with Reagan, engineered the abdication of Philippines President Ferdinand Marcos in 1986, averting a possibly bloody civil war, and facilitating the return of the Philippines to democracy. While the Laxalt Doctrine is no more a panacea than "human rights" groups' calls for prosecution *über alles*, it is superior for the United States both practically and morally, and it offers the more immediate prospect of relief for the citizens of the disagreeable regimes suffering under possibly intolerable conditions.

Laxalt's compelling description of how his doctrine came into being in the Philippines still bears reading today. As he recounted in this publication (see "My Conversations with Ferdinand Marcos: A Lesson in Personal Diplomacy," *Policy Review*, Summer 1986), he went to Manila in October, 1985, at Reagan's request to deliver a blunt message to President Marcos: You are out of touch with your countrymen, your domestic situation is deteriorating (both economically and militarily against an increasingly successful

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communist guerrilla movement), and things need to change, quickly. Marcos resisted the message, insisting that his government remained popular and legitimate, and that it was dealing effectively with its varied problems. In Laxalt's view, Marcos's rosy judgments corroborated the Reagan administration's concern that he had become dangerously isolated. In this context, despite the continuing importance of the Cold War, the Philippines seemed relatively isolated from the larger world stage. Accordingly, despite its timing, the Marcos crisis remains an instructive paradigm for the post-Cold War period.

After Laxalt's return to Washington, Marcos reluctantly accepted CIA Director Bill Casey's earlier suggestion to call a snap election to test his legitimacy. While the ensuing political campaign in early 1986 was generally free and fair, U.S. congressional observers and others confirmed that the conduct of the election itself was seriously flawed and dishonest. Basically no one outside of the Philippines accepted that Marcos had won, and his insistence that he had prevailed had split the Philippine military and was moving the country ever more rapidly toward civil war.

After a brief moment of reflection, the senator spoke the key words of the Laxalt Doctrine: "Cut and cut cleanly. The time has come."

What to do? Despite high-level defections from the military to Corazon Aquino, the real election winner, Marcos insisted that he retained the loyalty of 85 percent of the armed forces, and that he was prepared to fight. Laxalt consulted with Reagan, who rejected a Marcos-Aquino power sharing arrangement as "impractical and undignified," but who authorized Laxalt to tell Marcos "he would be welcome in the United States if he saw fit to come here." Laxalt called Marcos to extend the offer, and Marcos asked what Laxalt correctly calls "the gut question": What should he do? After a brief moment of reflection, the senator spoke the key words of the Laxalt Doctrine: "Cut and cut cleanly. The time has come." Shortly thereafter, Marcos was flown to Hawaii.

Application of the Laxalt Doctrine is thus a very pragmatic American response to complex and seemingly intractable international dilemmas. Rather than risking civil war and enormous bloodshed in the Philippines, as well as even more sustained threats to America's Clark air field and Subic Bay naval base, Laxalt successfully urged a negotiated exit for President and Mrs. Marcos. "Justice" for the corruption and human rights abuses of the Marcos era was not explicitly addressed in the few moments of decision making, and no immunity was promised, although it seemed implicit in Reagan's offer to allow Marcos to enter the United States. (Ironically, civil immunity was not forthcoming here, prompting Marcos to try to return to

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the Philippines, a move repeatedly opposed by Mrs. Aquino, who wanted him kept out of the country.)

The Laxalt Doctrine today

MANY REFUSE TO ACCEPT the result of the Laxalt Doctrine in the Philippines case, arguing that Marcos ultimately escaped his just deserts, and many more argue that the broader idea of allowing a repressive ruler to exit from power should never be accepted. Pinochet must be tried, Wiranto must be tried, Milosevic must be tried, all of them must be tried. Nowhere in this "human rights" mantra is there room for a realistic cost-benefit analysis of the larger issues — including the ultimate maximization of human rights values — either from America's perspective or that of a repressive regime's citizens. Laxalt himself expressed concern about excessive interference with Philippine sovereignty, quaint words to today's human rights warriors. But those words still raise a fundamental and proper concern for the United States, especially when our own sovereignty is invariably a very frequent target of those possessed of a higher morality.

Obviously, in virtually every case, the United States faces complex tradeoffs among competing national interests and values, and among practical difficulties in implementing whatever policy may finally be agreed. One considerable practical difficulty, of course, is the mentality of the undesirable regime. There are some — and Milosevic is a classic example — for whom virtually the only conceivable exit from power is feet-first. Since the possibility of external powers removing these leaders is remote (for either lack of interest or ability), adhering to the model of inevitable prosecution results in only two alternatives: awaiting the inexorable results of the actuarial tables, or encouraging (or at least accepting) open insurrection and its accompanying bloodshed (not to mention the possibility of the defeat and execution of the insurrectionists and their supporters).

Thus, where clear, tangible American interests do not rise to a level justifying our use of military force, the wisdom of preserving the option of a graceful exit for distasteful leaders is apparent. Moreover, it is not just American interests at stake, but the futures of the citizens of the countries involved, many of whom earnestly believe that removing the oppressive regimes, however imperfectly, is better than having them hold on to power, perhaps even increasing their repression to do so. The policy of prosecution *über alles* may suit the Cromwellian standards of the "human rights" groups, but it does little for the citizens living under the regimes in question. They may prefer a less than perfect deal that, over time, enhances freedom and democracy, rather than insisting on abstract (and often unattainable) justice for the undesirable regime, or effectively requiring civil war to oust it. The alternative, the Laxalt Doctrine, while perhaps not as aesthetically

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pleasing to the refined tastes of the morally superior, at least has the practical advantage of being more likely to succeed. Consider the following examples:

- In Haiti, Gen. Cedras's last-minute decision, under threat of imminent invasion to be sure, to exit the country undoubtedly saved many lives by eliminating the potential for a smoldering urban guerrilla war or protracted score-settling. Cedras faces no real threat of return and trial, and Haiti is certainly none the worse off thereby. To the contrary, the objective observer has to ask whether the "vindication" of democracy through the return to office of President Aristide has, in the years since, really produced any progress at all in Haiti. Perhaps the answer is so depressing that few ask the question.

  Interestingly, in an earlier iteration of this dilemma in Haiti, President Reagan himself points out in his autobiography that he made the decision to offer "to spirit Jean-Claude (Baby Doc) Duvalier, with his family and a group of friends, out of Haiti and fly them on an Air Force jet to Paris" almost simultaneously with his decision to "relocate" Marcos from the Philippines "to avoid, as we had in Haiti, a bloody civil war." It is no surprise that President Reagan so closely shared the views of Paul Laxalt, not just in the Philippines but more broadly as well.

- In Indonesia, Gen. Wiranto's fate is far from clear, but it appears almost certain that he and the military will accede to continued civilian control, which is likely to improve the prospects for strengthening democratic institutions in Indonesia. Prosecuting Wiranto and other key military leaders, by contrast, might well provoke a military coup, and, consequently, the indefinite postponement of further Indonesian evolution toward a stable democracy. Nonetheless, Indonesia is also under intense pressure from "human rights" advocates to cede the prosecution of Wiranto and other military figures involved in East Timor to an international tribunal, an increasingly common approach that makes it even less likely that undesirable regimes will step aside voluntarily.

- Indeed, the internationalization of the prosecutorial approach has already had adverse consequences in the case of Chile. There, Gen. Pinochet stepped back from power after being rejected in a free and fair referendum. Did the immunity from prosecution he and others received as part of the deal amount to fairness and justice as some would define them? Probably not, but so concluding does not alter the calculus through which many Chileans rationally concluded that they were still better off with a return to democracy and an immune Pinochet than with Pinochet remaining in power and democracy in Chile only a distant mirage on the horizon. The efforts by a Spanish

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magistrate, apparently acting in collusion with international "human rights" groups out to advance their own political agendas, to extradite Pinochet from the United Kingdom — a form of judicial kidnapping — have only served notice on unpopular regimes that they need to negotiate the terms of their exits from office more exactingly. Moreover, the fundamentally political agenda of the "human rights" groups is clearly demonstrated by the differential treatment accorded Pinochet and Fidel Castro, who travels abroad with precisely the kind of "impunity" denied to Pinochet.

- The problem of eliminating undesirable leaders can also arise in the context of rebellious factions or separatist movements controlling parts of nation-states, as with regimes actually in power. In Sierra Leone, for example, an extended civil war was brought to a temporary halt last year through the internationally negotiated Lome Accords. Under the terms of this agreement, a "national unity" coalition government was formed, including the rebel leader Foday Sankoh, whose forces undoubtedly committed numerous atrocities during the course of the lengthy civil war. (Interestingly, despite the brutal recent record of his forces, even the National Democratic Institute characterized Sankoh's rebellion as being "against the years of an authoritarian, one-party state that had sunk the country into poverty and corruption.") Whether Sankoh ever really intended to comply with the Lome Accords is doubtful, but when their ongoing implementation, particularly the disarming and demobilization of rebel forces, actually raised the prospect of eroding his power base, Sankoh's troops returned to military conflict. The attendant humiliation of United Nations peacekeeping efforts prompted the intervention of British forces to restore stability in their former colony and prevent a complete debacle. Sankoh's subsequent (and highly fortuitous) capture by Sierra Leone government forces then immediately raised the question of whether he should be tried for war crimes and crimes against humanity, or whether so doing would simply incite his followers and their international supporters to continued guerrilla warfare. With British forces set to withdraw, and with the military situation in Sierra Leone still highly volatile, the Laxalt Doctrine (or its British corollary) might well be applicable there.

- Consider what may be the hardest contemporary case, Serbia's Milosevic. Press reports, subsequently denied, indicated that even the Clinton administration was contemplating a Marcos-like exit for the Serbian leader. If application of the Laxalt Doctrine permitted Milosevic to retire with immunity to an estate on the Riviera, thus giving Serbia at least a possibility to create a democratic government, the international human rights cognoscenti would undoubtedly rise in righteous wrath. But what would the citizens of Serbia do? We know

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already that opposition to Milosevic is intense, although unfocused, disorganized, and ill-equipped to take on the military directly. Repeated efforts to generate popular opposition to Milosevic have fizzled time and time again. Moreover, there is no necessary guarantee that an interim regime after Milosevic departs Belgrade would inevitably welcome a transition to a democratic system (however imperfect at the outset), or behave any better internationally than Milosevic and his cronies.

While we can by no means guarantee the most desirable outcome, negotiating terms for Milosevic (and undoubtedly several other Serbian leaders) to "get out of Dodge" would provide leverage for the outside world in post-Milosevic Serbia. We can be sure that while Milosevic remains in power — and recent constitutional changes to permit his reelection indicate he is currently in no mood to step down — stability and reconstruction throughout the Balkans are still remote. What would Serbia's neighbors, eager for peace and stability in the region and the attendant economic reconstruction and growth that are so urgently needed, say if Milosevic had a concrete option for a Marcos-like departure from Serbia? If the increased criminalization of Bosnia and Kosovo is any indication, conditions there may actually be getting worse. That deterioration is no more perfect justice than would be Milosevic sunning himself on a beach, and it obviously leaves the average person in the region worse off. How long are they supposed to wait for the punctilios of the "human rights" groups to be satisfied before the condition of the actual residents in former Yugoslavia is allowed to improve?

Resist or regret

THERE IS NO DOUBT that many "human rights" activists are motivated as much by their desire to construct a comprehensive international law straitjacket as they are by their concern for the victims of war crimes and crimes against humanity. For them, the results in particular cases, such as Pinochet or Wiranto, are of less concern than the broad precedents they can establish to override national legal systems. Their agendas sound dry and legalistic (putting many otherwise astute observers immediately to sleep), or appear frivolous and irrelevant to traditional foreign policy analysts (such as "social summits" and the recent "Beijing-plus-five" conference in New York), far removed from international realpolitik.

Unfortunately, precisely the opposite is true. Many "globalists" (especially the human rights groups) have a deeply political agenda, and one of its central elements is the gauzy notion that force and power in international affairs can be easily replaced by "the rule of law" enforced through multilateral organizations. Although wildly naïve (and therefore dangerous), one

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unmistakable objective is the limitation of American power through a network of legal prohibitions applied initially to the likes of Pinochet, but applied later to American presidents and secretaries of state and defense.

Americans can resist this tendency now or face the deleterious consequences later. Accordingly, the Laxalt Doctrine provides both a more realistic way of dealing with immediate problems of undesirable regimes and also protection against the implicit agenda of the human rights warriors and their allies. Different American administrations and their decision makers will make different tradeoffs under the Laxalt Doctrine, which is not only to be expected, but also to be welcomed. Indeed, it is the prospect of that very flexibility and the necessity to craft case by case judgments that make it such a potentially important and useful tool of a realistic American foreign policy. It is by no means a free pass for repressive regimes. There are almost certainly cases in which Americans will not find a villa on the Riviera acceptable for undesirable or authoritarian rulers, and where hanging justice is the only appropriate end. Nonetheless, the Laxalt Doctrine is a quintessentially American response to an imperfect world filled with irritatingly imperfect humans, and its revival in a new administration would be a most welcome development.

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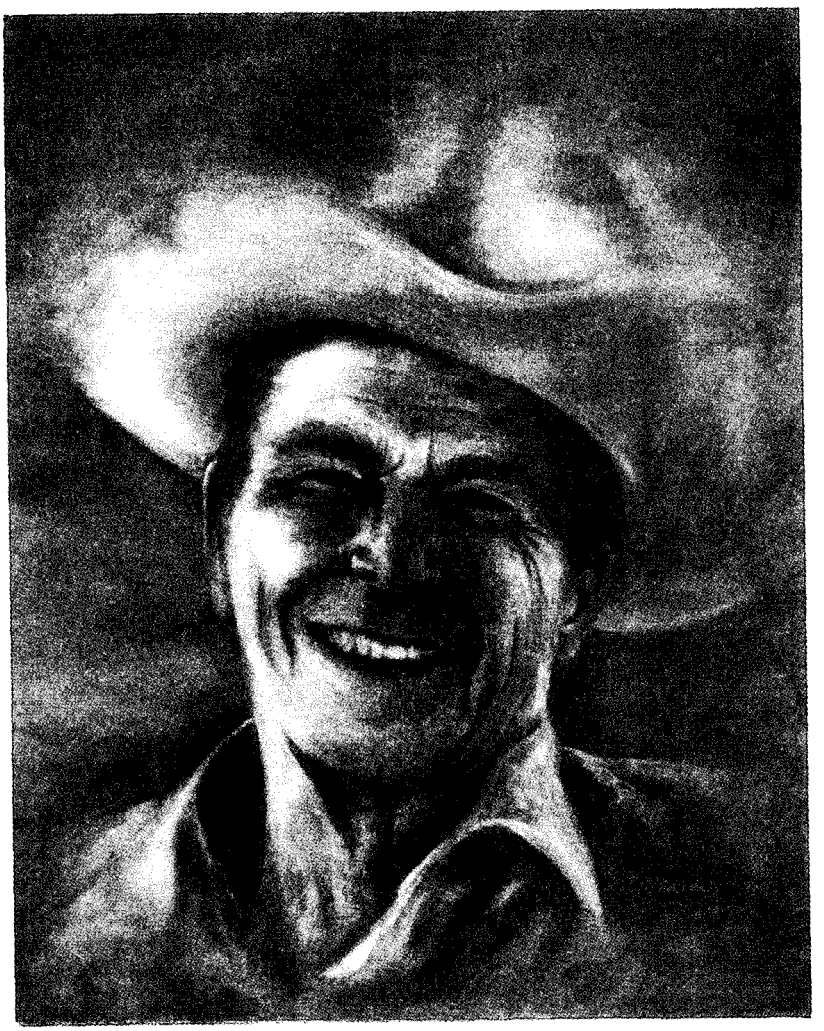
Do You Miss Reagan?



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Death by Dietary Supplement

By HENRY I. MILLER AND DAVID LONGTIN

IN HIS NEW BOOK *Dr. Atkins' Age-Defying Diet Revolution*, best-selling author Robert Atkins urges readers to take various dietary supplements — vitamins, herbs, and minerals — that he says will prevent or alleviate a host of ailments. Most of these concoctions are harmless enough, even if their purported health benefits are unproven.

But he is imprudent in encouraging the use of ginkgo biloba, advocating large doses and setting no upper limit on the amount readers should take. He never warns about this herb's anticoagulant, or "blood-thinning," properties, a matter of concern to people who might require emergency surgery or who are being treated with blood thinners.

Atkins is not alone in promoting dietary supplements. They are advertised everywhere, for all manner of ailments, and about one-third of Americans buy herbal products like echinacea, ginseng, and St. John's wort. They spend about $5 billion annually at retail outlets, and sales are rising about 18 percent a year. Thousands of products cram the shelves of health food stores, grocery markets, and pharmacies nationwide. They are also widely available through catalogs and the Internet. Even major pharmaceutical companies

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are adding dietary supplements to their lines. But what assurances do consumers have about exactly what they are getting, and about the safety of the products?

A regulatory vacuum

REGULATION OF DIETARY supplements varies considerably among developed countries, even among member states of the European Union, which has yet to adopt any transnational standards for these products. Under the most extensive legal framework, Germany has tested more than 300 herbal remedies since 1980, finding about two-thirds of these products to be safe and at least minimally effective (under a very liberal standard). It controls these substances as drugs. But consumers in other Western societies receive little protection.

Last year, Canada allotted $7 million (Canadian) to establish an Office of Natural Health Products over a three-year period. Although this new agency will govern the premarket assessment, labeling, licensing, and monitoring of herbal supplements, the precise scope of its mandate has yet to be determined. In the meantime, these products are blooming and booming in a regulatory vacuum.

In Britain, the majority of herbal remedies are classified as food supplements and are thus unlicensed. Others, sold by herbalists, are specifically exempt from licensing under a 1968 law. Only a small number of herbs that are regulated as drugs by the Medicines Control Agency carry any real assurance that they are safe and effective. But few places in the industrialized world, if any, have a more permissive environment than the United States.

The U.S. Congress has virtually exempted herbal remedies from government oversight. When the Food and Drug Administration considered regulating these products in the early 1990s, manufacturers and health food stores orchestrated a massive lobbying campaign against stricter controls. The industry produced television commercials that depicted movie star Mel Gibson handcuffed by FDA agents for possessing vitamins. The result was the Dietary Supplement and Health Act of 1994. Pushed heavily by Sen. Orrin Hatch of Utah, the home base of many supplements makers, and passed over the objections of the FDA, the law created a new product class, the dietary supplement, which was not subject to regulations applied to drugs. Now any substance that can be found in foods, regardless of amount or action and including chemicals that act as hormones or toxins, can be produced and sold without any premarket testing or approval.

The FDA can restrict the sale of an herbal product only if the agency receives well-documented reports of health problems associated with it. The FDA formed its Special Nutritionals Adverse Event Monitoring System in 1993 as an important component of its MEDWatch program, which is designed to track problems arising from the range of drugs and medical

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devices the FDA is charged with regulating. The Special Nutritionals monitoring system was established to record adverse reactions associated with the more than 3,000 dietary supplement products that were then on the market.

But sometime around October 1998, after logging 2,621 "adverse reactions," including 184 fatalities, associated with these products, the FDA quietly stopped monitoring most cases in which herbal remedies had been linked to illness or death. Top agency officials said that they cut the monitoring program because of budgetary constraints. Although the FDA insists that it still collects data on medical emergencies linked to dietary supplements, only three staff members are now assigned to evaluate adverse reactions caused by the industry's products, which are made by hundreds of private companies.

The agency and its herbal monitoring system have been criticized by the congressional General Accounting Office. In July 1999, the GAO said that the FDA's adverse-reaction reports were incomplete, poorly documented, and inadequate to use as a basis to establish safe dosages for herbal supplements. The FDA requested an additional $2.5 million specifically to improve its dietary supplements tracking program in its fiscal 2000 budget, but this was among several FDA requests eliminated by a Senate subcommittee.

Underreported medical problems

THE NUMBER OF MEDICAL emergencies linked to dietary supplements has unquestionably been underreported. Unlike the monitoring system for regulated drugs, which requires manufacturers to report side effects, the dietary supplement system relies on voluntary reports of adverse reactions from the makers of herbal products. This is rather like the IRS asking taxpayers to voluntarily provide information on their own underreporting of income, and some manufacturers have failed to report thousands of medical problems linked to their brands. Depositions in a recent court case involving the death of a woman from Sacramento, Calif., show that E'ola, a Utah multilevel marketing firm, received 3,500 customer complaints about its Amp II, a diet formula containing the herbal stimulant ephedra. The *San Francisco Chronicle* reported that none of those incidents was ever disclosed to the FDA.

In a regulation that went into effect earlier this year, the FDA worsened the situation by freeing supplement manufacturers to make all manner of dubious health claims — that their products treat conditions such as premenstrual syndrome and acne, for example, although there is little or no evidence to support these assertions.

With FDA authority limited by the 1994 law, the Federal Trade Commission, which monitors advertising, has taken a more vigorous role in regulating the makers of supplements. In 1999, the FTC took legal action against seven manufacturers that had violated regulations requiring advertis-

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ing to be truthful and verifiable. The companies were selling cure-alls for conditions such as impotence, cancer, and obesity. The commission also sent e-mail warnings to 1,200 Internet sites that it said had made "incredible claims" for drugs, devices, and supplements, including herbal remedies that would supposedly ward off AIDS. Late last year, the commission also issued its first set of advertising guidelines aimed specifically at the supplement industry.

Even with these FTC measures, however, consumers have no real guarantee that dietary supplements are safe or effective, that the information about dosage on the label is correct, or even that the substance in the container is genuine. Only a few herbal supplements — saw palmetto for treating enlarged prostate glands and ginkgo for improving memory slightly in Alzheimer's patients — have been shown to be at all efficacious.

Researchers discovered that eight ointments sold as "natural" treatments for eczema illegally contained a potent prescription steroid.

Moreover, because the demand for some herbal remedies exceeds the supply from natural sources, unscrupulous manufacturers occasionally have switched to cheaper look-alike substances that are pharmacologically different. In February 2000, researchers in Britain discovered that eight brands of herbal skin ointments sold as "natural" treatments for eczema illegally contained dexamethasone, a potent prescription steroid. The creams had such huge quantities of steroid that they could have permanently damaged delicate skin. The creams for children, whose skin is most vulnerable, contained five times more steroid than the adult products. At about the same time, the FDA ordered four California supplement distributors to recall herbal compounds that illegally contained glyburide or phenformin, prescription drugs that lower blood-sugar levels. The action came after a diabetic in California developed hypoglycemia after taking a product said by its manufacturers to contain only natural Chinese herbs.

When ConsumerLab.com, a new private company, tested various herbal remedies, it said that many of the products did not deliver what the manufacturers promised. It found fault with 10 of 27 brands of saw palmetto studied, and discovered that in one-quarter of the 30 brands of ginkgo biloba, the levels of the active ingredient were less than indicated on the labels. Chemists at the Good Housekeeping Institute recently analyzed eight brands of SAMe, an herbal preparation advertised as a "natural Prozac" to relieve depression, and found that two had only half the promised levels of active ingredient, while another contained none at all. Consumer Reports also examined 10 brands of ginseng and concluded that several contained almost none of the active ingredient.

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Heavy on advocacy, light on science

THERE IS NO SHORTAGE of information available to consumers about dietary supplements, but it is heavy on advocacy and light on scientific proof. Putting it another way, until there is evidence that rises to the standards of the medical and scientific communities that a preventative or therapeutic nostrum actually works, we do not know that it does work. We might just as well take a pinch of *herbes de Provence* along with a multivitamin pill each morning.

Worse yet, many of these products are already known to be toxic, carcinogenic, or otherwise hazardous, causing high blood pressure, deadly allergic reactions, cardiac arrhythmias, and kidney or liver failure. Some also can exacerbate autoimmune diseases like arthritis and lupus. In February, articles in the medical journal the *Lancet* identified life-threatening side effects of St. John's wort: interference with the protease inhibitor indinavir, which can lead to treatment failure in AIDS patients; and rejection of heart transplants by an interaction with the immune suppressant cyclosporine.

In June, the *New England Journal of Medicine* reported that a Chinese herb that caused kidney failure in dozens of Belgian dieters in the early 1990s appears to have even deadlier long-term effects — cancer and precancerous lesions. The subjects in this study were an unlucky subset of some 10,000 Belgian dieters, who from 1990 to 1992 took a combination of Chinese herbs and conventional drugs prescribed by weight-loss clinics. After dozens of victims suffered kidney failure, investigators discovered that Belgian pharmacists had been using mislabeled Chinese herbs to produce the diet pills. Instead of using *Stephania tetrandra*, the druggists had filled the pills with derivatives of the herb *Aristolochia fangchi*, which has long been known to damage kidneys and to cause cancer in animals. At least 70 people experienced complete kidney failure, while another 50 suffered kidney damage serious enough to require treatment.

The first urinary tract cancers were found among these victims in 1994. To prevent the onset of the disease in others, doctors in Brussels advised patients whose kidneys and ureters had stopped functioning to have the organs surgically removed. Thirty-nine people chose to have the operation over the past several years. When researchers studied the excised tissue, they were shocked to discover that 18 of the patients had already developed cancer, while 19 others had precancerous lesions.

Belgium banned the importation of *Aristolochia* in 1992. In May 2000, the FDA distributed warnings to health professionals and the supplements industry about the dangers of *Aristolochia*, and it plans to block the herb's entry into the United States in the near future. For many critics of current U.S. policies on dietary supplements, this action is long overdue, considering that Germany banned *Aristolochia* in 1981 and that the World Health

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Organization issued a warning about the herb in 1982. Medical organizations also have advised people to stop using herbal remedies such as St. John's wort, ginkgo biloba, and ginseng at least two or three weeks before any scheduled surgery to avoid dangerous interactions with the anesthesia.

Aggressive marketing

TO THE GROWING ALARM of medical experts, dietary supplements companies have begun aggressively marketing their products to children and their parents. They peddle a variety of potent concoctions that supposedly will help kids gain strength or lose weight, or will treat illnesses ranging from colds and flu to depression and even Attention Deficit Disorder (ADD). As a result, increasing numbers of children are gulping supplements, often at the insistence of parents in search of "natural" remedies or "healthful" alternatives for youngsters who eat too much junk food. In 1999, a study conducted by National Public Radio, the Kaiser Foundation, and the Kennedy School of Government found that 18 percent of parents were giving their children dietary supplements other than vitamins or minerals.

In Vancouver, Wash., Nutrition Now Inc., for example, uses a cute rhinoceros cartoon character to promote its line of dietary supplements for kids, including Rhino Pops, an echinacea-based cold remedy. From Saco, Maine, Fresh Samantha Inc. ships to grocery stores nationwide Body Zoomer fruit smoothies that carry cartoon pictures of children to catch the eye. Their drinks contain ginseng, guarana, and spirulina (a green algae).

Although many supplement companies advise youngsters under 18 not to take the stimulant ephedra, many products contain this toxic ingredient, and a few industry representatives still recommend it for kids with ADD. In a report earlier this year, the FDA documented 134 cases linking ephedra to serious reactions, including insomnia, nervousness, seizure, hypertension, stroke, and death, over a 33-month period ending in March 1999. Ten of the reports involved children younger than 18. But the manufacturers' position remains ambiguous. The industry opposes a proposed New York ordinance that would prohibit ephedra sales to minors, claiming that "it would be more effective as a labeling issue," said Wes Siegner, counsel to the ephedra committee of the American Herbal Products Association. "You don't want to cause trouble for salesclerks." Despite the warning labels, however, ephedra still enjoys considerable popularity among teenagers trying to lose weight.

Supporters of herbal supplements who scoff at reports of adverse reactions retort that with tens of millions of people consuming them in this country alone, there would be a significant body count if the products were genuinely dangerous. There are several answers to such an assertion. Even with profound underreporting of problems, reports of serious adverse effects

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are in fact mounting. In the absence of compelling evidence of benefit from the use of the vast majority of herbal supplements, these severe — even life-threatening — side effects are particularly worrisome (some would say unacceptable). Finally, problems are likely to increase with some large retailers now selling new higher-potency formulations and consumers taking large doses for long periods of time.

Risk and regulation

THE SUPPLEMENT INDUSTRY is moving voluntarily toward standards for "good manufacturing practices," a concept borrowed from drug makers that includes "adequately equipped manufacturing facilities, adequately trained personnel, stringent control over the manufacturing processes, reliable and secure computerized operations, and appropriate finished product examination and testing." But these measures address only the identity, purity, and potency of the products, neglecting the fundamental question of whether the active ingredients themselves are safe and effective, and they offer no independent verification that the standards have been met.

Regulation of the herbal supplement industry is so lax, and some of the products so dangerous, that a public health catastrophe seems inevitable. For example, a mislabeled or contaminated product could cause numerous cases of organ failure or death. After such a major incident, Congress would almost certainly move quickly to reclassify herbal supplements as drugs, which are stringently regulated by the FDA — requiring a demonstration of safety and efficacy before they could be marketed. Every product would have to gain approval from the FDA, a process that takes 12 to 15 years and costs, on average, about $500 million. Few of the herbal remedies now in stores could meet such criteria, and consumers would thus be denied access to many of them.

It is tempting to suggest, as some have, that herbal supplements might be provided a regulatory shortcut, in the form of a requirement for certification only of safety, but this proposal presents difficulties. For one thing, the safety of a drug (or herbal supplement) in normal clinical use is difficult to judge in a vacuum; a global judgement of safety and efficacy together is often necessary. The level of risk — side effects, or adverse reactions — that is acceptable varies widely and depends on the product's particular use, or "indication." For example, severe and frequent side effects that might be tolerable in a drug offering a definitive cure for AIDS or pancreatic cancer would be unacceptable if the product were intended to treat baldness or hay fever symptoms.

The current unregulated commerce in dietary supplements may pose a real threat to public health, and even those who believe that the new drug approval process is too stringent would not argue for the complete absence

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of oversight. Before a calamity occurs, the worldwide industry should find better ways to police itself.

Models for oversight

WHAT MODELS FOR oversight exist? The FDA enjoys an absolute monopoly over regulation, a situation that can produce delays, increased expense, and inefficiency. A wide range of other institutional models for product oversight exists. At the opposite pole from a government monopoly is a laissez-faire, self-regulating system in which government has no role at all and decisions about testing and marketing are made unilaterally by manufacturers. This is the system that currently exists for dietary supplements. Between the two extremes, other institutional alternatives offer various configurations of government oversight and nongovernmental mechanisms that could regulate and monitor the nation's supply of dietary supplements. These alternative organizational arrangements involve varying degrees of privatization and FDA control of the certification process.

Recent history provides evidence of the failures of the extremes of monopoly and laissez-faire to serve the public interest; abuse of power is too easy in both. Government monopolies can foster abuses by bureaucrats. Laissez-faire creates similar temptations for companies, with more obvious public risk. Proponents of a laissez-faire system maintain that in the absence of government oversight, companies would be induced to protect the integrity of their products by goodwill, a desire to preserve their reputations, and the fear of civil litigation or even criminal prosecution. But while an acceptable level of safety might be achieved much of the time, inevitably some manufacturers would take dangerous shortcuts in production, testing, or surveillance. Public reaction to isolated incidents of poisonings led Congress to pass the Biological Act of 1902 and the Food, Drug, and Cosmetic Act of 1938. This history illustrates some of the pitfalls of a laissez-faire system.

If the extremes are unworkable, what other models are available? One possible arrangement would be a private monopoly organization to review and certify new products, perhaps under the sanction of the FDA or some other federal agency. Still another would have supplement manufacturers contracting with competing private entities to perform the certification.

Companies could elect to contract voluntarily with a newly established foundation that could operate like Underwriter's Laboratories (UL), a large, not-for-profit organization that tests and certifies more than 16,500 types of products. Many of these items, such as electrical appliances and equipment, automotive and mechanical parts, fire-resistant building materials, and bullet-resistant glass, present inherent potential hazards to life and property.

Using more than 650 discrete standards, or guidelines, certification from UL or its competitors currently offers assurance of safety but not of effective-

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ness, except in a few special cases where the two factors are inextricably linked, such as fire extinguishers and smoke detectors. These organizations charge a fee based on the cost of developing standards and testing, which in turn depends on the characteristics of the particular published standard for the product in question. UL does not underwrite any risk of the products it certifies, nor are its liability concerns excessive. As an independent third party, UL is not jointly liable for any defects in the product's performance in situ, and UL certification does not connect the organization to any negligence by the manufacturer. UL and its rivals hold no monopoly on safety certification, and their endorsements are not equivalent to government approval. Many retailers, however, are reluctant to carry products that lack certification by UL or one of its competitors. Insurers also occasionally deny liability coverage for products without it. Companies, insurers, and the independent testing laboratories all have incentives to maintain high standards both for consumer products and for manufacturers.

Retailers are reluctant to carry products that lack certification by UL or one of its competitors.

Another similar model for voluntary self-regulation that functions routinely and efficiently in the United States is the certification of plant seeds sold to agricultural producers or growers in order to prevent any compromise of seed quality or consistency. In California, for example, oversight is performed by the nonprofit California Crop Improvement Association (CCIA), which provides a voluntary quality assurance program for the maintenance and increase of crop seed. Each variety that enters this program is evaluated for its unique characteristics such as pest resistance, adaptability, uniformity, quality, and yield. Seed production is closely monitored by CCIA to prevent out-crossing, weed, other crop, and disease contamination that may negatively affect seed quality. Seed movement is monitored from field harvest, through the conditioning plant, and into the bag. Samples can be rejected if "off-type" seeds are found at a percentage that is greater than standards permit, as is occasionally the case with beans, cereals, and sunflowers.

The EU model

ANOTHER, PERHAPS EVEN MORE apposite, model for regulating the supplement industry is the procedure for regulating the majority of medical devices in the European Union. In it, competing private entities perform certifications.

This system relies heavily on various sets of product standards and normally does not involve government regulators directly in product oversight.

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For low risk (so-called Class I) devices, such as tongue depressors and eyeglasses, manufacturers themselves are allowed to certify that their products meet the necessary standards. For higher risk, Class II devices, those that might inflict serious harm if they malfunction but that are unlikely to kill patients, manufacturers must obtain third-party review from private sector, profit-making "notified bodies," which test products, inspect manufacturing systems, and ultimately verify that EU standards have been met. Following this certification, the products can be marketed. Since 1995, most Class II devices, such as X-ray machines, dentists' drills, heartbeat monitors, and hip implants, have undergone this sort of nongovernmental third-party examination within the EU.

Because these "notified bodies" vie with each other for business, they have reason to be expeditious but thorough in their inspections. As a result, approval of new medical devices in Europe takes perhaps half as long as it does in the United States, shortening the overall development process by roughly two years, apparently without compromising safety. The more favorable regulatory climate within the EU has allowed many companies to establish a positive cash flow by introducing new products in Europe before marketing them in the United States. The British consulting firm the Wilkerson Group has compiled a list of 100 medical devices that are already available to patients in other developed nations, but not in the United States. This trend is most evident in the fast-moving areas of medicine, such as imaging and cardiology. Recently, Medtronics, one of the largest U.S. device makers, announced that it was transferring its entire venture group to Europe.

Self-regulation

VOLUNTARY MECHANISMS of self-regulation such as UL and CCIA could be adapted by the manufacturers of dietary supplements for effective oversight of their products, without involving federal regulators. UL and similar organizations are sanctioned by the Occupational Safety and Health Administration (OSHA), an agency of the U.S. Department of Labor. Such a government mandate arguably would not be necessary, however, as long as manufacturers of dietary supplements maintained an arm's length relationship from the regulator. In other words, the overseer should be a certifier, not a collaborator.

ConsumerLab.com, the new private testing firm mentioned earlier, is an example of the model according to which supplement manufacturers contract with competing private entities — or at least it would be if there were competitors on the scene. It remains to be seen if there will be. In the meantime, ConsumerLab.com's approach has some positive elements. Founded by a physician formerly with the FDA, the group is analyzing various dietary supplements and posting the results on the Internet. It licenses a seal for

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products that meet its standards. The company hopes to profit by selling its seal to supplement makers and its information to third parties on the Internet, such as health care websites and online retailers.

Unlike the not-for-profit UL, however, ConsumerLab.com is a for-profit (and privately held) operation that currently lacks either competition or government certification, factors that favor efficiency and reliability. There seem to be few safeguards in place to ensure that this new testing company will remain sufficiently independent from the supplement manufacturers with which it seeks to do business. Finally, according to the company's website, "products are tested on *any* of the following criteria [emphasis added]": identity and potency, purity, bioavailability, and consistency. Arguably, products should be tested on *all* of these criteria, but as we have seen, even a perfect score would neglect the fundamental question of whether the active ingredients themselves are safe and effective.

Under any model of nongovernmental regulation that certifies, on a voluntary basis, the safety and efficacy of herbal supplements, manufacturers that choose to participate would gain a measure of protection from liability should a mishap occur, and also support for claims that they make a premium product. Most important, consumers would be assured that the products bearing the Good Housekeeping-like seal of approval had met certain criteria for safety, potency, and quality. They would retain the widest selection of herbal therapies, as well as the freedom to choose certified or noncertified brands.

Perhaps paradoxically, this evolution to greater regulation — albeit voluntary and extragovernmental — would move us closer to a truly free market: consumers exercising independent and informed choice among a broad spectrum of competing products.

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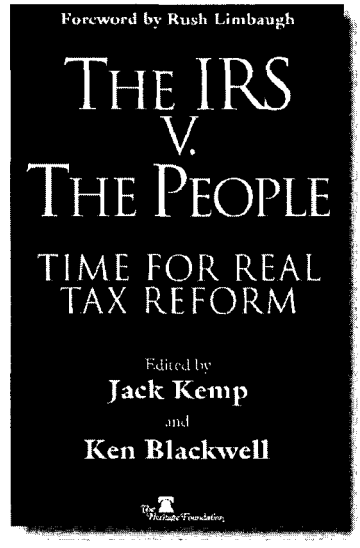
Washington, We've Had *Enough!*



It is bad enough that the President vetoed the tax bill that Congress passed recently—a tax bill that would have reduced our record-high tax burden. What's even more outrageous is Washington will now keep taking record amounts of our hard-earned money through a tax code that is hopelessly complex, unfair, discourages savings and taxes death and marriage! In *The IRS v. The People,* 14 of America's foremost thinkers discuss why the country's tax code must be scrapped. This book gives readers plenty of reasons to stand up and say, "Washington, we've had enough!" Taxes are too high—the average American family hands over 38 percent of its income to the taxman. *The IRS v. The People* gives taxpayers practical solutions to America's tax monstrosity in a handy pocket guide format.

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The "Chineseness" of Taiwan

By ARTHUR WALDRON

ON THE EVE OF THE VICTORY of opposition candidate Chen Shuibian in Taiwan's March presidential election, there were jitters aplenty. Chinese prime minister Zhu Rongji, usually cast as the mainland's "nice cop," waggled an admonitory finger on television and warned the Taiwanese not to vote for Chen, who had been an advocate of Taiwan's independence. I heard of at least one person who cast his vote and then took the next plane out. When the votes were counted, Chen's victory caused consternation in Beijing and caught Washington by surprise. Some in Taiwan's military were also reportedly unhappy with Chen. A rumor made the rounds on the eve of his inauguration that a Taiwan jet or naval ship might defect to China as Chen was sworn in. Some even feared civil unrest.

In the event, nothing of the sort happened. Even some in the long-ruling Kuomintang party seemed to take a slight satisfaction: Their loss of power at least proved that the political reforms they had implemented were genuine. The winners were pleased but still pinching themselves: They had come a long way, from their beginnings in the streets fighting the police to the cor-

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ridors of power. Given the potentially explosive passions that still lie beneath the surface in Taiwan politics, the good sense and even good fellowship were all the more remarkable. In Taiwan for the inauguration in May, I found the island more confident and full of life than I have known it in almost 30 years. And a key to it all is the much underestimated Chen Shuibian himself.

A core of principle

CHEN CAME TO THE HIGHEST OFFICE after 20 years as a key leader in Taiwan's democratic opposition. Many expected him to prove inept and divisive. Certainly he is a contrast to many of his opposite numbers among the Kuomintang stars of his generation; in addition to being very able, as is Chen, they tend to have studied abroad and have near-native command of foreign languages. Chen's parents were landless farmers in Taiwan's south; peasant style, he calls himself "A-bian" — a populist anomaly in a society where graduate schools and advanced degrees figure in conversation the way weather does to the British. Not that A-bian lacks qualifications: He scored top in the island-wide college entrance examination and graduated from the Law School of National Taiwan University. But no one groomed him for success. His choices ever since he abandoned a lucrative career in corporate law to defend political prisoners (and eventually served prison time himself) have not been those of a careerist.

Nor have foreigners, by and large, taken to Chen. Washington apparently feared him as an "extremist." Many were privately relieved a few years ago when he was defeated for reelection as mayor of Taipei by a Kuomintang full-court press — a loss that, ironically, pushed him into the presidential race. In fact, few policy people had ever met him. State Department rules permit only low level officials to visit Taiwan, and even they had neglected the fundamental diplomatic duty to get to know the opposition as well as the ruling party. They knew the familiar Kuomintang faces, young and old, but had less of a feel for Chen and the DPP — even though, during his term as mayor of Taipei, Chen had been easy to find: The new City Hall is an easy walk just across the plaza from the Grand Hyatt Hotel.

This concern, to be fair, was not entirely a function of ignorance. In my handful of meetings with Chen over the past few years I was always troubled, while sensing his obvious high intelligence and political skills, by a certain rigidity or lack of subtlety; a tendency to oversimplify, particularly when he discussed foreign or China policy.

Those doubts have now dissolved completely. Chen's cabinet choices, drawn from both his own Democratic Progressive Party and the defeated Kuomintang, are generally agreed to be first rate. His choice of prime minister in particular is inspired: Tang Fei, current defense minister and a former air force general, a man universally respected both for the way he modernized Taiwan's air force and for his dedication to the principle of civilian con-

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trol. The choice sends the right messages to the Taiwan military (reassuring), to the PRC (firm), to the Kuomintang, of which Tang is a lifelong member (conciliatory), and to the people of Taiwan (statesmanlike).

As all the bright but untested officials took office in Taipei, among them antinuclear protesters, aboriginal rights activists, feminists, and so forth, there was something reminiscent of the chaotic Clinton transition — but with a difference. Judged by the talent of its members, the Clinton administration could once have been considered promising. What led to its failure was the deep disorder in Clinton's soul. Chen's personal core, by contrast, is rock solid, and that solidity will pull the new administration together. His family, shown on television, was a moving sight: his elderly mother, his wife in a wheelchair he lifts her into and out of (she was crippled when a truck repeatedly drove over her in an unsolved, probably political, "accident"), and their children — of military age (he was the only candidate whose children would actually serve in case of war). His personal qualities elicited trust from the voters: they trust A-bian to clean up political corruption and crime (the biggest issues in the election); they trust him not to surrender to China, no matter how much Beijing (or Washington) might pressure him.

I decided that the stubbornness I had detected in Chen was principle, and a classical Chinese text came to mind that explains its central role: "to rule by virtue is like the pole star: It sits in its place while the other stars follow their courses around it." Such solidity will serve Taiwan well.

Across the straits

THE EYES OF THE WORLD, however, were on none of this. The big question for the international media between Chen's election in March and his inauguration in May was, "Will China attack Taiwan?" It might be the case that how Chen deals with corruption and other domestic issues in Taiwan will determine his success or failure; it might even be the case that how Beijing's leaders deal with their domestic problems, corruption included, will decide their fate. None of that was relevant. Beijing was clearly out of sorts with his victory: Official Chinese media couldn't even bring themselves to mention Chen's name. (They used it once, when reporting, without comment, the results). Worldwide, the news was filled with alarmist stories, all insisting on a single point: Chen must "accept 'One China'" as Beijing defined it or disaster would follow.

It was a vague demand. As Hong Kong columnist Frank Ching pointed out, if you accept that Taiwan is part of China, then clearly "One China" does not exist now, so what exactly did it mean? But in spite of the vagueness, China's demands were insistent and not without menace. "Routine" Chinese artillery training exercises began near Quemoy shortly after the inauguration and the endless detonations brought back the terror of the 1950s bombardments for those old enough to remember. The possibility of

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war was all people wanted to talk about when I briefly visited Hong Kong just after the ceremonies.

I remain skeptical about China's willingness actually to use force against Taiwan. The reason is that to do so would be suicidal. An amphibious invasion is out of the question. As for the much bruited possibility of missile bombardment, Hitler bombarded London with thousands of V-1 and V-2 rockets, to no discernible effect. China has 250 or so missiles it could fire at Taiwan before running out, and they would do damage — as much as an earthquake, people say, which means not enough to win. Even without American intervention, Taiwan would weather the storm and probably strike back. Meanwhile CNN would focus on each incoming warhead as closely as it did on those Iraq fired at Israel during the Gulf War. An American president would have no choice but to act: militarily of course, but also to completely shut all American markets to China. China's economy depends for survival on imports of oil and massive exports of manufactured goods, and as these halted, the resulting internal crisis would undermine completely the delicate political bargain that has existed since 1989 between the Chinese government and its people: namely, you keep your heads down and stay out of politics, and we will guarantee you a rising standard of living.

Even without American intervention, Taiwan would weather the storm and probably strike back.

The events of 1989 and the international response to the Tiananmen massacre constitute a good parallel. Then China was killing its own people, in one place, for a few hours. Yet her international position and economy nearly collapsed. As Western investment and Western tourists dried up, it was waves of visitors and money from Hong Kong and Taiwan that saved the day, and neither would be available in a straits crisis. Even the few hours of domestic slaughter, moreover, spooked neighbors: I was evacuated on a charter from Shanghai to Tokyo that June, and I well remember Japanese at Narita sucking air in through their teeth in the characteristic manifestation of concern. If and when China actually attacks Taiwan or another of her neighbors, Japan and the other Asian states will respond with major armament programs of their own, which will not be good for anybody, least of all for China. Tiananmen was bad; an attack on Taiwan would be a hundred times worse.

The danger of course is that China's leaders will not understand this. They have fostered militant nationalism as a tactic to hold power since Tiananmen but may not be able to control it. They are, moreover, prisoners of their own propaganda; their yes-men amplify the messages they want to hear. Finally, the Clinton administration has confirmed their perception of American weakness by yielding in the past to Chinese threats. For them to believe that we might actually stand aside while they "bludgeoned" Taiwan

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(as the *New York Times* once put it) is a potentially disastrous misunderstanding, but one we have helped to create. Therefore if peace is to be ensured, we need to convey these facts by words and actions, and on balance we are doing so, albeit without much margin for error.

The Chinese cultural world

FAR MORE IMPORTANT to Asia's future than a possible risk of war is the tremendous impetus events in Taiwan give to the democratic agenda for the whole region. In Hong Kong just after the inauguration, interviewers on RTHK radio and Star TV tried to make me focus on the sensational possibilities of war and bloodshed over Taiwan, to which I responded that they were missing the real story. With Taiwan now completely free, the spotlight will turn to the rest of the Chinese cultural world: to Hong Kong (where full democracy is promised within eight years), to China itself (where people want it but the government has ruled it out), even to Singapore (where the recent presidential "election" dispensed with the actual business of voting since, it was said, the outcome was obvious).

The traditional excuses for denying political participation ("Asian values," stability, and so forth) are looking rather threadbare. I asked people in Hong Kong how they would have felt if, in 1997, they had elected a Legislative Council and a chief executive to take power when the British left. Very proud, was the answer — like the people in Taiwan today. The inhabitants of Hong Kong and Singapore are every bit as prosperous and well-educated as those in Taiwan. The same is true for some of China's coastal cities. (Not that economics is the key.) Wang Dan, Lin Xiling, and Wei Jingsheng, all veteran Chinese democratic activists, attended Chen's inauguration. The demand for freedom and democracy will continue to grow.

Look out over the years from now until 2008: During that period there will be two more sets of legislative and presidential elections in Taiwan. They will get plenty of coverage. In Hong Kong, existing law requires that the decision be made by then whether to move to full democracy and an elected chief executive. China has no easy option. A negative answer will greatly displease the Hong Kong people and hurt China's image, but a yes will pave the way for a Hong Kong leader having a legal mandate far more impressive than any in Beijing. In China itself there will be at least two important party meetings which will decide, among other things, whether Jiang Zemin stays in office. Even without postulating that likely economic troubles or strikes or other unrest will unexpectedly confront China during this period, the calendar is full of precipitating deadlines. Add to this the desire of many in China for political reform and the sympathy thus generated for Taiwan, and you have an idea of what is coming.

Given all this, the policy assumptions that have guided U.S. Asian policy since the Nixon administration are also looking threadbare. In the

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1970s many Americans were convinced that our defense of "freedom" in Asia had been quixotic and mistaken. The authentic nationalism of Hanoi was overwhelming our puppets in Saigon. Likewise Mao's vigorous "New China" in Beijing would soon displace the American clients in Taipei. President Carter even considered withdrawing military support from South Korea. The task for Washington was, for once, to get with the tide of change instead of opposing it.

Now it turns out we launched our boat into the wrong tide, and our policy risks being beached alongside the decaying hulk of Chinese communism. The law of unintended consequences has kicked in with a vengeance. Derecognition of Taiwan in 1979 ended dreams there of American sponsored return to the mainland, but instead of folding, the leaders in Taipei began democratizing, and the island grew stronger. Twenty years later the tide of change in Asia is toward liberal economics and politics, and the remaining autocracies are being washed away, slowly perhaps, but surely. This process of regime transition will likely reach a resolution — or possibly a crisis — in the next decade or so, as the current mixed political economies of China and the others come to the end of the line. Dictatorship will either be renewed, at bloody cost, or abandoned, to be succeeded perhaps by genuine liberalism, perhaps by chaos. Thirty years ago such a prospect was unthinkable for most experts on China.

Taiwan as sovereign state

WHICH BRINGS US BACK to Beijing's demands of Taiwan. These developments render extremely unlikely any change in the actual substance of what Taiwan is today. Its internal political structure is now firmly fixed (certainly more so than is China's) and it is indubitably a sovereign state, even though the world is not quite sure what to call it or how to deal with it. Some in the 1970s expected derecognition would quickly force Taiwan to settle and become a "Special Administrative Region" of China under Deng Xiaoping's slogan of "One country, two systems." Visiting American officials still bring up the possibility, but it is a nonstarter (polled recently, Hong Kong residents advised their Taiwanese cousins against accepting it). The "peaceful reunification" anticipated in the 1970s and still demanded by Beijing is simply not going to happen — unless (and this is an important qualifier) it takes the form of a set of verbal formulas that regularize and normalize the domestic and international relations of two distinct states, what I call "baptism of the status quo." These are the facts that Beijing, Washington, and the rest of the world now must digest.

In his inaugural address Chen suggested much of this indirectly. But he spent most of his time talking about democracy, rule of law, and human rights, in words that must have stung the ears of the Beijing leadership as they waited for him to address their demands. When he turned to these

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toward the end of his address, Chen showed great goodwill and flexibility, more than enough to disarm, for now at least, those who always blame Taiwan when tension rises, and even more importantly, to demonstrate to Beijing that if they were serious, they could deal with him.

Chen pledged to keep the current constitution, not to change the country's name, and not to declare independence, all so long as China does not show an intention to use force. In all this he maintained close continuity with previous Taiwan administrations. He even spoke, carefully, about "a future one China." The pledge against independence was particularly important, since such a declaration regularly figures in worried American scenarios for conflict. (Shortly before going to Taiwan I debated former Ambassador Chas Freeman at the Council on Foreign Relations in New York: Whom should we pressure harder, Beijing or Taipei, if — the familiar bugaboo — "Taiwan declared independence and China responded with force"?) Making the pledge against independence conditional on nonuse of force by Beijing deftly shifts responsibility.

Given Chen's background as an advocate of Taiwan independence, I was skeptical that he could accept the demand that he endorse "One China" (and also skeptical that even if he did, it would lead anywhere: All Taiwan presidents before him *had* accepted "One China" and it had gotten them nothing, so it could not be the key some claimed. Even now, China treats it as no more than the ticket to the negotiating table, good for one admission but to be discarded thereafter. Agreeing to it would not, according to Beijing, end China's blockade of Taipei diplomatically and in international organizations, even though no agreement could in fact succeed without bringing Taiwan back into international society). My analysis was confirmed five weeks after his inaugural, when Chen went so far as to endorse the formula that made possible the highly suceessful 1993 Singapore talks between the two sides: namely, "One China, with each side having its own interpretation" — and China dodged.

Nevertheless, the way Chen dealt with China-related issues in his inaugural address left little doubt that if Beijing is serious about settling with Taiwan — and rumor has it that President Jiang Zemin sees that as his chance at a legacy to match Mao and Deng — then Chen can deliver a deal. How might he do it? It all comes back to something called the "Republic of China." To understand this, let us consider the problem of the national anthem.

"Chineseness"

THE INAUGURAL CEREMONY was carried out on bleachers above the plaza in front of the Presidential Building (the former Japanese governor's headquarters). The day was perfect: breeze, an overcast that blocked the sun, but no rain. Foreign guests were the second and third string VIPs who populate Taiwan events: leaders from small countries that

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recognize Taipei; retired officials; a very low profile U.S. delegation headed by Laura d'Andrea Tyson; and friends of Taiwan from academic and political circles. Most of these were from the right of center politically, and I kept asking myself, Where are the liberals? Weren't democracy and freedom traditionally issues for the left? Lech Walesa had come from Poland and a few others appeared: Harvard professor Roderick MacFarquhar, a former Labour MP in Britain, Carl Gershman from the National Endowment for Democracy, and former Rep. Stephen Solarz — but incomparably more of America's great and good rose from their seats to applaud Jiang Zemin last year at the People's Republic's fiftieth anniversary gala in Shanghai than joined this milestone event for freedom.

I kept asking myself, Where are the liberals? Weren't democracy and freedom traditionally issues for the left?

The ceremony began with music. Performances ranged from classical compositions both Chinese and Western in style to Taiwan aboriginal folk melodies, culminating with the national anthem, sung by Chang Huimei, better known as A-mei, a young woman of Taiwanese aboriginal ancestry. I had never heard of her before this performance, but when it was finished I understood fully why she is a star across China and throughout Asia. Her rendition was both respectful and electrifying, and was powerfully applauded.

Beijing, however, was offended, and reprisals were announced in short order: A-mei's CDs could no longer be sold in China; a Sprite commercial in which she appeared was banned there, and Coca-Cola announced the company was reconsidering her contract; future concert plans were up in the air. Beijing had decided to make an example of her. Why? A-mei was accused of supporting "separatism" by singing the national anthem.

And what national anthem, exactly? Not, as one might expect given Beijing's reaction, a Taiwanese separatist hymn (of which plenty exist) but rather a *Chinese* national anthem, words written in 1924 by no less than Sun Yat-sen himself, honored not only in Taipei but also in Beijing as the "Father of Modern China" and sung by all in China, communists included, during that country's finest modern hour, the war of resistance against Japan, 1937-45. The only thing "Taiwanese" about the anthem is that, since 1949 when the communists took power on the mainland and substituted their own, Taiwan has been the only place in the Chinese world where it has retained its status. Now, Beijing may very well have good reason to condemn the singing of Sun Yat-sen's anthem, but it cannot be "separatism." To sing it at Chen Shuibian's inauguration is, if anything, an affirmation of shared origins, shared values, and even shared nationhood — which brings us to the fundamental defect in Beijing's approach.

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The "Chineseness" of Taiwan

Beijing acts as if it possesses a monopoly on "Chineseness." Democratic activists in China, willing to go to jail for their convictions, arguably love that country more than do corrupt officials whose looted gains fill foreign bank accounts. Yet Beijing labels political dissent *fan hua*, "anti-Chinese." By the same token, it classifies as "separatism" just about anything done in Taiwan, short of running the five star (communist) flag up the pole and saluting it, whether those doing it are loyal to the Republic of China, or call for a Republic of Taiwan. Doing so utterly misreads the sentiments of the people on the island and throws away the one basis for amity or even unification that has any serious chance of working, which is to treat affirmation of the Republic of China as an affirmation of national unity.

"Republic of China" was from 1911 to 1949 the legal name for a unified Chinese state ruled first by the military leaders of the fallen Qing and then by Sun Yat-sen's heir, Chiang Kai-shek. Chiang took the name to Taiwan when he fled there at the end of the civil war. There his government continued to be recognized by the United States as the sole legal government of all of China, under the Republic of China name, until 1979, with no change in constitution, flag, anthem, or other symbols from what they had been since the 1920s on the Chinese mainland. Meanwhile Mao had of course proclaimed a new state, the People's Republic of China, on the mainland in 1949 — which not only expunged the name of the Chinese republic, but even from time to time queried whether it had ever been a legitimate regime at all. Washington followed suit when it recognized Beijing in 1979. The phrase "Republic of China" was banished from official usage in the United States (even the CIA fact book does not list it), to be replaced by "Taiwan."

Behind all the nice words and reassurances of the time was an intent to sacrifice Taiwan.

Washington carried out this linguistic purge because, as mentioned above, it expected that Taiwan's independent regime would soon buckle and come to terms with Beijing. The authors of the "normalization" policy saw themselves as boldly cutting the Gordian knot, and behind all the nice words and reassurances of the time was an intent to sacrifice Taiwan — though the expectation was that Taipei would make things easier for us by going quietly, even "voluntarily." That scenario failed then and although some foreign policy types still carry the torch for it, it is not going to succeed now. Its failure, however, has created a semantic problem for the nomenclature created in the 1970s: namely, that "Taiwan" — the name now standard in international usage, newspapers, and ordinary speech — is silent about Chineseness. If anything it suggests that the island is a separate entity. For this reason Beijing and foreigners who support "One China" find themselves in the anomalous position of wanting Taiwan to call itself the "Republic of China" (which at least affirms Chineseness) — even though they do not rec-

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ognize that as the name of a state, and cannot speak it themselves.

Naturally Beijing would prefer that the people on Taiwan define themselves as Chinese according to the People's Republic definition, but that is simply not going to happen. The choice is between a kind of Chineseness that Beijing doesn't like and Taiwaneseness, which it likes even less. Now China faces a policy dilemma along the lines of Morton's Fork or Hobson's Choice.

A usable past

For to the disappointment of pro-independence activists in Taiwan (who demonstrated against him as he was sworn in), Chen in his inaugural address repeatedly affirmed the legal status and continuity of the Republic of China. In the days following he reinforced the message with symbolic action: paying obeisance to Sun Yat-sen at the Martyrs' Shrine, visiting the front line in Quemoy, calling on the widow of former president Chiang Ching-kuo, son of Chiang Kai-shek, and even bowing to the elder Chiang at his memorial hall in central Taipei. This last step stuck in the craw of a lot of the new president's supporters; to acknowledge "the Gimo" was for Chen something like Nixon going to China, since in the minds of many Taiwanese, and with good reason, Chiang is the supreme oppressor.

To be sure, without Chiang's army from the mainland defending it, the island would almost certainly have been incorporated into the People's Republic — as was Hainan, the comparable island off the Guangdong coast. Without Chiang's clout in Washington and support from the "China Lobby," American assistance would never have been forthcoming. The argument can even be pushed further: Chiang made possible Taiwan's economic miracle by abandoning statist policies in the 1950s and giving free rein to some brilliant young Chinese economists, and he insisted more generally on maintaining and developing in Taiwan an alternative Chinese society and culture. Without that example Beijing might never have realized how much better a Chinese society could do without communism.

Nevertheless, many Taiwanese associate the phrase "Republic of China" above all with the arrival of an occupying army and an unelected government, with the deaths of thousands of compatriots in February 1947 when the army crushed protests, with imprisonment, assassination, and blacklisting during more than three decades of dictatorship. The impulse of many oppositionists — including those whom Chen defended after the watershed Kaohsiung demonstrations in 1979 — was implacably hostile. They would have liked to tear down the whole edifice, and at some level and some time Chen and many of his colleagues in the new government have certainly felt the same way.

But there is also much of value in the original ideals of the Republic of

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China as Sun Yat-sen envisioned it early in the twentieth century. It would have been a genuinely liberal and constitutional state, with an elected parliament, free press, and so forth. In embracing it, selectively, Chen is developing a usable past. Furthermore, tearing down the Republic of China now and attempting to declare independence would polarize the island, possibly lead to bloodshed, and almost certainly would fail. Far from opening the door for Taiwan to international respectability, such a declaration would provide the pretext many still seek to freeze it out totally.

Finally, Chen is a lawyer. He understands the importance of precedent, authority, and institutional continuity. Since 1979 he has helped to lead the Taiwanese dissident movement, some of whose members once considered violence and terrorism the only possible way forward, along a path of responsible political contention — a path made possible, of course, by the liberalization over which the ruling party has presided.

The legal structure of the Republic of China has acquired new life as democratic politics have developed.

The legal structure of the Republic of China may have been dry bones for 30 years, but it has acquired new life as democratic politics have developed. In his inaugural address, Chen propounded what has become the mainstream opinion in Taiwan: the willingness of the people of the island, who insist on their own sovereignty and independence, to accept as a vehicle the foreign derived shell company, the "Republic of China," which now controls only Taiwan and a few offshore islands, in order to meet the externally imposed imperative that they somehow remain "Chinese." We have the makings here of a viable compromise.

So far Beijing will have none of this. It has anathematized as "separatists" both the people on Taiwan who define themselves as (Republic of) Chinese and those who think of themselves as Taiwanese. But such blanket negation of everything Taiwan has to offer is utterly unrealistic. It may serve domestic political interests, rather as Chiang's insistence that he would one day "recover" the mainland removed any need to face facts. But it will not lead to the achievement of Beijing's goals.

When this is pointed out, those who speak for Beijing tend to invoke force as the ultimate and decisive resort. But as we have seen, this is not a realistic option. Taiwan is only growing stronger and more capable militarily and its people more unified. The United States, subtly but unmistakably, is signaling that it means what is has said all along about a peaceful resolution of the problem. On the day of the election Secretary of Defense William Cohen was in Tokyo; the night before the inauguration an Aegis class cruiser transited the Taiwan Strait, and word leaked out also of a satellite ground station that will give Taiwan direct access to U.S. intelligence photographs,

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and of a Patriot missile test, the first ever outside the United States, to be held in Taiwan next summer.

Far better to end denial and deal with facts. Calling everyone on Taiwan a "separatist" regardless of whether they sing a Chinese national anthem or a Taiwanese one thoroughly misreads the situation on the island and forces the entire population, willy nilly, into a position of hostility. The only way the problem can ever be resolved, and this is a rather remote possibility, is for Beijing to accept the Republic of China, on Taiwan, as the entity with which it deals, accepting both its political independence and its implicit Chineseness. That seems to be what Chen is offering, and it has overwhelming support in the island. My conversations in China suggest that a lot of Chinese people would welcome it as well. They have no desire for war, admire Taiwan's reforms, and want change at home. The question now is whether leaders in China have the vision, and the power, to respond.

A slight chance

FRANKLY, I AM PESSIMISTIC. The ongoing created "crisis" with Taiwan has become an integral part of China's domestic and foreign policy. As such, it serves several important purposes and is thus not to be discarded lightly. It is a source of leverage on the United States, as well as a mission for the Chinese military more welcome than preparing to kill more students. As a "patriotic" issue, moreover, it supplies a simulacrum of legitimacy for a regime that otherwise lacks any (and is not about to seek a mandate at the polls). Deng Xiaoping might have had the guts to deal with Taiwan realistically, but in 11 years as China's president, his successor Jiang Zemin has shown himself to lack anything approaching the requisite imagination and boldness. He is authoritarian by instinct, someone who bans, imprisons, or punishes his opponents rather than listening to them. His unimaginative approach to Taiwan has a strong authoritarian side: As he memorably put it, "without the threat of military force, peaceful unification cannot be achieved," and those threats have been rising in the past few years. He has courted the military on this issue with big budget increases and through speech and propaganda stoked the flames of irredentist nationalism. Since any conceivable negotiations would yield a settlement far short of nationalistic demands, he would risk reaping the whirlwind domestically. It is not clear that a regime that accords its own people no political rights can even contemplate according genuine rights to Taiwan. More likely Beijing wants to dominate that island's people just as it dominates its own.

Outside of China, however, foreign reaction to Chen's inauguration has been very positive, which means that categorical rejection will cost Beijing much of the international sympathy on which she counts. Japan has praised the new president's moderation, and the American position has moved in a

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very constructive direction, as Washington seems increasingly to grasp the importance and implications of Taiwan's emergence as a fully free and democratic state. Major policy speeches by the highest officials of the American Institute in Taiwan (our "unofficial" embassy) have praised that development and urged China to take note of its importance.

One final, small, but possibly decisive reason for hope exists as well: namely, President Jiang Zemin's desire for a legacy. The Chinese president reportedly wants to accomplish something in office that can credibly match the reputed achievements of his predecessors Mao Zedong and Deng Xiaoping. In truth, he is far from having done so. The one possibility is a breakthrough with Taiwan. But here is the catch.

Unless he stumbles badly, Chen Shuibian looks set to be president in Taipei for the next eight years and to preside over a fundamental remaking of the island's political power structure. At the end of that time Chen will still be a relative youth at 57 years old, while Jiang Zemin will be over 80, and may well already have left office. Over the past decade Jiang rejected a series of proposals by Taiwan's President Lee Teng-hui, all of which could have led to fundamental progress, in the expectation that Taiwan's new president would settle for less. Chen has proved an unpleasant surprise on that count, but the fact remains that if Jiang wants his legacy, he is going to have to deal with what is on offer. He cannot hope, as Deng did, that the U.S. will ultimately force Taiwan to come to terms, nor should he imagine, as some of his generals seem to, that an attack on the island would be anything other than a disaster for China and himself. Taiwan's democratic system plus Chen's reasonableness mean that the U.S. will continue to keep the peace in the region. Nor, one hopes, can he possibly believe his own propaganda, which portrays the Taiwanese as thirsting after unification. The only path to the big achievement is serious negotiation with the new Taiwan administration.

Such negotiation will not be easy, and will yield at best only a small part of what Beijing currently demands. But I believe that a compromise is possible that would be acceptable to Taiwan and also allow Jiang to claim victory. Such a settlement would be immensely popular inside China. The two sides would at last be able to reap the enormous potential benefits of cooperation between their complementary economies while secure and uncoerced personal and cultural exchange would create a vast web that would draw them closer together. This is in fact the best way forward, as well as the only realistic one. The Chinese president should think long and hard before he reflexively rejects Chen's bold overtures. They may well be his, and China's, very last chance.

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Justice to George S. Schuyler

By MARK GAUVREAU JUDGE

LAST YEAR, Random House republished *Black No More*, a satirical novel by George S. Schuyler (pronounced sky-ler). First published in 1931, the book is a clever story about what would happen if blacks could change their skin color at will. It sends up both race obsessed whites and the leading black figures of the day. All of this is unremarkable — that is, until the reader sees the anonymous biographical note on Schuyler that opens the new edition. We learn that Schuyler was born in Rhode Island in 1895, had parents who "stressed the values of hard work, self-reliance, and determination," and that Schuyler was once "one of this country's most eminent black journalists." The title of his autobiography: *Black and Conservative*.

In fact, Schuyler, who died in 1977, was one of the great anti-communists of the twentieth century — it would not be an exaggeration to call him the black Whittaker Chambers (Schuyler, like Chambers, even began his career as a socialist) — as well as a remarkable journalist. In his worldliness and disdain for cant, he was second only to H.L. Mencken, his friend, mentor, and a man who referred to Schuyler as "perhaps the best of all the Aframerican journalists." He was, as one of his old colleagues put it, "a friend to the high priests and the Platos of the streets." *Black and Conservative*, long out of print, is a classic.

Mark Gauvreau Judge is the author of If It Ain't Got That Swing: The Rebirth of Grown-Up Culture *(Spence)*.

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Even in a culture whose media and publishing are dominated by liberal elites, it's remarkable how completely Schuyler's name has disappeared from history. A trip to the Library of Congress reveals that he is nowhere to be found in the *Contemporary Black Biography*, *Who's Who Among African-Americans*, or the *Dictionary of American Negro Biography*. The Internet yields as much information on Schuyler's daughter Philippa, a child prodigy who would grow up to die tragically in Vietnam. There was only one copy of *Black and Conservative* in the entire Washington, D.C., public library system. Clerks at several area bookstores had never heard of George Schuyler.

There is, however, a long entry for Schuyler in the *Dictionary of Literary Biography*. The entry was written by Nickieann Fleener of the University of Utah. Fleener does a fair job summarizing Schuyler's life. She itemizes Schuyler's vita: associate editor, columnist, and reporter for the *Pittsburgh Courier*, once one of the nation's premier black newspapers, from 1924 to 1966; "one of the first black journalists to gain national prominence in the twentieth century"; and a man who thought of himself as "a citizen of the world as well as a black man." Schuyler "traveled extensively during his career of over fifty years," and "was one of the first black reporters to serve as a foreign correspondent for a major metropolitan newspaper," the *New York Evening Post*. He was "particularly familiar with social, economic, and political conditions in Africa and Latin America. . . . Because of [Schuyler's] unique position in the black press, the strength of his satirical style, and the diversity of his subject matter, numerous newspapers and magazines sought his work through the late 1960s. However, Schuyler's dogmatic conservatism ran in absolute contrast to the philosophies expressed by virtually every major spokesperson of the civil rights movement. As the movement grew, the outlets for Schuyler's work shrank until he was in virtual obscurity at the time of his death in 1977."

It's remarkable how completely Schuyler's name has disappeared from history.

What Fleener doesn't do, however — what only a reading of Schuyler can do — is give a sense of Schuyler's writing style. He was called "the black Mencken," and with good cause: He was astringent, authoritative, patrician, funny, and brutally honest in a way that has become impossible for most working journalists today. Schuyler refused, in the most delightful way, to countenance nonsense. Here, from a piece published in the *American Mercury* in 1939, he tackles blacks' resistance to the wooing of communists:

> Naturally the communists regarded Negroes as sure-fire converts, and have proselyted them these twenty years. They have tried every bait, device, dodge, and argument to win black adherents. Holding interracial dances, defending Negroes afoul of the law, bulldozing landlords, inun-

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dating Negroes with "literature," staging countless demonstrations and marches, endorsing Father Divine, nominating black nobodies for office, and courting Negro leaders.

But despite this prodigious activity, the American Negro remains cold to communism. With the communist indictment of traditional mistreatment of black America by white America, he agrees. But he rejects the Muscovite cure. During his three-century struggle to avoid extermination, he has developed certain special techniques of survival, and most communist methods run counter to them. He is suspicious of any program that over-simplifies his problem by ignoring shadings and nuances, and recommends identical tactics in Birmingham and Buffalo.

After a century of listening to black hustlers with Valhallas for sale, the Negro has become wary of schemes for instant salvation. Such movements have habitually attracted only the lunatic fringe, goaded by a handful of disgruntled opportunists. Marcus Garvey, with his incomparable Back-to-Africa set-up, could only corral 30,000 members. More jeers than cheers currently greet the amphigories of Father Divine, and the followers of kindred dark-town messiahs are noisier than they are numerous. Even the Negro clergy no longer wields the old-time influence. . . . In short, the Aframerican is perhaps the most cynical fellow in the Union, and is less likely than the white proletarian to sign a death warrant in a moment of emotional intoxication. True, he only has his life to lose, but he wants to hold on to that.

Schuyler was a tireless worker with an intellect invigorated by books, ideas, and learning. Born in Providence, R.I., then raised in Syracuse, N.Y., his father died when he was three, and his mother remarried a cook and porter for the New York Central Railroad. His mother taught him to read and write before he entered grade school. From the beginning, he was a bookworm. In 1912 Schuyler dropped out of school and joined the army, where he served in Seattle and Hawaii. After his discharge in 1919, Schuyler moved to New York City and then back to Syracuse. There he did part-time odd jobs, which left him time to read. It was around then that Schuyler became interested in socialism. It's important to emphasize that he was *interested* — not enamored, bedazzled, or swept off his feet. The biographical notices on Schuyler don't often make this distinction. Schuyler was an intellect who would travel miles simply to kick around ideas with other intellectuals, and after 1917 the exciting, if insane, ideas that were percolating were socialist ideas.

In 1922 Schuyler returned to New York City. He buried himself in the *New York Times*, the *Nation*, the *New Republic*, and the socialist newspaper the *Call*, and he soon became involved with the black socialist group Friends of Negro Freedom, led by A. Philip Randolph and Chandler Owen. Schuyler got a job as an assistant at the *Messenger*, the journal of the organization. He soon began writing a monthly column, "Shafts and Darts: A Page

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of Calumny and Satire." His writing caught the eye of Ira F. Lewis, the manager of the *Pittsburgh Courier*, the black weekly with the second largest circulation in the country. In 1924 Schuyler began to write a column for the *Courier* for three dollars a week. He would become associate editor and editor of the New York edition of the paper. His association would last until 1966, when the paper unceremoniously disassociated itself with Schuyler following his criticism of Martin Luther King.

While the few accounts of Schuyler's life note that it was some time in the mid-1920s that he rejected communism, *Black and Conservative* reveals that Schuyler might have disdained Marxism from the beginning. In it he recalls laughing with putative Bolshevik Philip Randolph about "some Socialist cliche or dubious generalization." Even more skeptical was Chandler Owen, cofounder of the *Messenger*. Schuyler describes Owen as "a facile and acidulous writer, a man of ready wit and agile tongue endowed with the saving grace of cynicism. He had already seen through and rejected the socialist bilge, and was jeering at the bolshevist twaddle at a time when most intellectuals were speaking of 'the Soviet experiment' with reverence. . . . He dubbed the Socialists as frauds who actually cared little more for Negroes than did the then-flourishing Ku Klux Klan."

Schuyler's work caught the attention of H.L. Mencken, who would become his lifelong friend and correspondent.

Schuyler's work soon caught the attention of H.L. Mencken, who would become his lifelong friend and correspondent. The journalist of their kind is now extinct — the polemicist (not pundit) who had not gone to an Ivy League school (indeed, who had avoided higher education entirely) and who was also a working journalist with a great gift for telling a story. Mencken and Schuyler were great debunkers. They were also not afraid of the nuts and bolts of good journalism. Indeed, to simply regard Schuyler as a combustive editorial writer does serious disservice to his vast body of work and experience. Some of the best parts of *Black and Conservative* are accounts of Schuyler's time living with a group of bums in the Bowery in New York City and of his labors at odd jobs to get by.

Like Mencken, Schuyler also traveled to the South and wrote about it as an outsider. In 1925, the *Courier* sent him on a tour to boost readership below the Mason-Dixon line and report on conditions of blacks in the South. "Next to being strictly honest," he wrote in the *American Mercury*, "there is no more trying state in this humdrum republic than being simultaneously a Negro and a traveler." In *Black and Conservative* he recalls that he traveled by bus from town to town in the Jim Crow South, armed only with the barest statistics about the place — population, transportation facilities, sources of employment. He soon developed a routine he would use on

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assignment for the *New York Post* in Liberia, Latin America, and Europe. He would first interview a cab driver who would take him on a tour of the town, then talk to a local barber, bellboy, landlord, and policeman. The next day he would interview town officials. It's the kind of shoe leather journalism rarely practiced anymore.

In 1926, Schuyler became the chief editorial writer for the *Courier*. That same year the *Nation* published his article, "The New Negro Art Hokum." In it, Schuyler dismembered the movement, then at its apex, known as the "Harlem Renaissance." Supporters of the movement claimed that the explosion of art, from paintings to literature to jazz, represented a new and distinctly black form of aesthetic expression. Hooey, wrote Schuyler.

> As for the literature, painting, and sculpture of Aframericans — such as there is — it is identical in kind with the literature, painting, and sculpture of white Americans — that is, it shows more or less evidence of European influence. In the field of drama little of any merit has been written by and about Negroes that could not have been written by whites. The dean of Aframerican literature is W.E.B DuBois, a product of Harvard and German universities; the foremost Aframerican sculptor is Meta Warrick Fuller, a graduate of leading American art schools and former student of Rodin; while the most noted Aframerican painter, Henry Ossawa Tanner, is dean of American painters in Paris and has been decorated by the French Government. Now the work of these artists is no more "expressive of the Negro soul" — as the gushers put it — than are the scribblings of Octavus Cohen or Hugh Wiley.
>
> This, of course, is easily understood if one stops to realize that the Aframerican is merely a lampblacked Anglo-Saxon. If the European immigrant after two or three generations of exposure to our schools, politics, advertising, moral crusades, and restaurants becomes indistinguishable from the mass of Americans of the older stock (despite the influence of the foreign-language press), how much truer must it be of those sons of Ham who have been subjected to what the uplifters call Americanism for the last three hundred years. Aside from his color, which ranges from very dark brown to pink, your American Negro is just plain American. Negroes and whites from the same localities in this country talk, think, and act about the same. Because a few writers with a paucity of themes have seized upon imbecilities of the Negro rustics and clowns and palmed them off as authentic and characteristic Aframerican behavior, the common notion that the black American is so "different" from his white neighbor has gained wide currency.

What is remarkable about this passage is not only its candor and vitality, but the fact that it appeared in the *Nation*, a left-wing magazine (which did, however, publish a response from the poet Langston Hughes the next week). To be sure, Schuyler got his share of hate mail; some of the funniest parts of *Black and Conservative* are his responses to left wingers demanding that he

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be fired. But until the late 1960s, his career was never in jeopardy. He seemed to have come from an era when mainstream newspaper and magazine editors were made of sterner, less pusillanimous and politically correct stuff.

In fact, Schuyler was even rewarded by the black community for his talent; from 1937 to 1944 he was the business manger of the NAACP, an organization whose left-leaning ways he never hesitated to criticize. *Black and Conservative* shocks and delights on page after page not only as a fascinating story told by a master stylist, but as an example of a journalist working with genuine and absolute freedom of expression. Not freedom of expression as understood by the modern newspaper world, but real freedom — the ability to denounce, with genuine verve, intensity, and hostility, ideas that one sees as bunk. So much of modern editorial writing has become what the *Wall Street Journal* recently called it — cardboard. Schuyler was a dynamic mural. After a trip to Liberia, he flatly announced that the African country was not ready for self-rule. When the black leader W.E.B. DuBois became editor of the communist magazine the *New Masses* in 1946, Schuyler squared off: "Agitation is the food and fuel of Communists and all of its organs of propaganda. So when Dr. DuBois joins the *New Masses* he is more definitely than ever committed to that policy. . . . After all, perhaps it is appropriate that DuBois should join Stalin's literary gendarme where inconsistency, backbiting, and charlatanism are crowning virtues and political irregularity is the only vice." Imagine such an item running in a newspaper today.

He came from an era when mainstream newspaper and magazine editors were made of sterner stuff.

Indeed, it's hard to read much Schuyler and not be awed by the fierce clarity and wisdom — of a kind often absent from dialogue about race today. In 1950 Schuyler was a delegate to the Congress for Cultural Freedom, an anti-communist group (that, as Schuyler explains, had more than a few communists in it). His address, "The Negro Question Without Propaganda," is a masterpiece of perspicacity and pure level-headedness. "Actually," Schuyler wrote, "the progressive improvement of interracial relations in the United States is the most flattering of the many examples of the superiority of the free American civilization over the soul-shackling reactionism of totalitarian regimes. It is this capacity for change and adjustment inherent in the system of individual initiative and decentralized authority to which we must attribute the unprecedented economic, social, and educational progress of the Negroes in the United States." The piece was distributed to every U.S. embassy and entered into the *Congressional Record*. Schuyler rewrote the piece as "The Phantom American Negro," emphasizing in the new draft that the media were presenting the American public with a picture

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of blacks as perpetually aggrieved, angry, rebellious, and revolutionary. This picture, claimed Schuyler, was simply false. It was reprinted by 17 magazines the world over, including *Reader's Digest*.

Black and Conservative is also a tragedy, not because of what is in it, but because of what happened just a year after its 1966 publication. In 1928 Schuyler married Josephine E. Lewis, the white daughter of a prominent Texas family. In 1932 they had a daughter, Philippa, who became Schuyler's deepest source of joy. Philippa Schuyler was a child prodigy. Her IQ was 185, and she could read and write at two and a half. At three she could play the piano, and at four she was composing classical music. She performed on the radio at age five, and at 13 wrote a piece of music, "Manhattan Nocturne," that she performed with the New York Philharmonic. At the 1944 New York World's Fair, New York Mayor Fiorello La Guardia declared June 19 "Philippa Duke Schuyler Day." She would write several books and win 27 music awards. She was profiled by Joseph Mitchell in the *New Yorker*. Mitchell was taken with Philippa, but referred dismissively to her father as the author of "a rather angry column for the *Pittsburgh Courier*." Philippa was also a great beauty. According to the *Washington Post*, "for hundreds, thousands of black kids in the 40s and 50s, she was a role model, a reason to take piano lessons."

In the mid-1960s, Philippa had grown tired of touring to play classical concerts and decided to follow in her father's footsteps.

She would also die young. In the mid-1960s, Philippa had grown tired of touring to play classical concerts and decided to follow in her father's footsteps. It was 1964 and by then the civil rights movements had begun to become entangled with the militant black power movement. That year Schuyler was dumped from the *Courier* for his opposition to Martin Luther King receiving the Nobel Peace Prize (an opposition that was wrong, in my view, because of its refusal to differentiate between King's nonviolent crusade and the combative black power movement). Schuyler spent the last years of his career writing columns for the *Manchester Union Leader* and film reviews for the John Birch weekly *Review of the News*.

Philippa traveled to Vietnam as a correspondent for the *Union Leader*. She would also play a few concert dates. On May 9, 1967, she was killed in a helicopter crash while trying to transfer Catholic schoolchildren to safety. She was 35. Schuyler must have been devastated, although he didn't show it. *Union Leader* publisher William Loeb described Schuyler at the funeral as "a composed man. Whatever he felt inside he knew that a gentleman doesn't bare [his feelings] to the rest of the world." How tragic that a man who dedicated his entire life to fighting communism would lose his only daughter to

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its scourge. His wife died two years later.

George Schuyler died in 1977. As the liberal black writer Ishmael Reed notes in his introduction to *Black No More*, in the last few years of Schuyler's life it was considered offensive in black circles even to interview the old newspaperman. Yet history has turned out differently than Schuyler's adversaries thought. The West won the Cold War, and people seem increasingly capable of coming around to the truth that communism was one of the great unambiguous evils of our century — that in their evil hearts there was no difference between fascism, Nazism, and communism. This is what Schuyler wrote in 1937:

> What seems to have escaped the generality of writers and commentators is that all three forms of government are identical in having regimented life from top to bottom, in having ruthlessly suppressed freedom of speech, assembly, press and thought, and in being controlled by politicians. . . . What is new about these forms of government is that they are controlled by politicians with a reformer complex; ex-revolutionists who have gained power and have nobody to curb their excesses. . . . The politicians, being the only class in society that is charlatan enough to offer a cure for everything, are quick to see the opportunity. They promise the suffering people everything if elected to office, as Lenin promised, as Mussolini promised, as Hitler promised and as our Big Boss promised.
>
> Order requires regulation, regulation requires regimentation, regimentation is based on a plan, nothing must interfere with the operation of the plan if it is to be successful; criticism of the plan might conceivably hinder operation and must therefore be squelched.
>
> We are rapidly approaching this form of State in this country and practically have it in all but name. It won't be long now.

Maybe it will take a while yet — at least while the writings of George Schuyler remain available, even if only in the dark recesses of the last library in town.

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Russia's Dysfunctional Media Culture

By HERMAN J. OBERMAYER

IN ALL THE RECENT WESTERN attention to the corruption and racketeering of Russia's leadership, one critical fact of life has gone largely overlooked. In the eight years since the dissolution of the U.S.S.R., all efforts to create a free press — including myriad U.S. media assistance programs — have failed. Indeed: Russians, particularly those in the outer provinces, are as ill-informed today about their leadership's wanton debauchery of the nation's assets as when Stalin and Brezhnev reigned.

Throughout the past decade, my wife and I advised newspapers on business practices in 10 communist bloc countries from the Sea of Japan to the Gulf of Finland. We consulted with editors, journalists, and executives in more than 100 newspaper offices and observed printing production in more than three dozen press and mailing operations. At the beginning of the decade, as we witnessed, virtually all Eastern Europeans doubted the notion that profit making and media independence were inextricably intertwined. Today, by contrast, many newspapers are independent, editorially and financially, in Warsaw Pact countries and former Yugoslav republics.

But independent newspapers are still hard to find in most former Soviet republics, particularly in Russia. From 95 percent to 98 percent of its approximately 2,700 regional and rural newspapers (mostly dailies) remain government mouthpieces. They are owned by municipalities, counties, or small republics. Virtually none are viable as independent economic units. This statistic is confirmed by both the Russian Journalist Association and the Glasnost Defense Foundation, a media think tank financed by the United

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States, UNESCO, and several European nongovernmental organizations (NGOS). Russia has a two-tiered press: national and provincial. Problems at the national level are bad enough. But in the hinterland, where more than 90 percent of Russians live, newspapers lack even a basic commitment to an informed citizenry.

News vs. advertising

DURING COMMUNISM'S HEYDAY, newspapers were vital parts of the political-economic apparatus. Publications had gigantic circulations. Most adults were involuntary subscribers through automatic wage and pension deductions. The local daily was printed on a state owned press, which shared quarters with the editorial staff, in one of the community's most important buildings, the press-printing palace. In large cities it often dominated the landscape. In capital cities it was likely a skyscraper.

The historical roots of the problem are plain enough. In 1991 and 1992, when the Soviet Union fell apart, press control passed from the Communist Party to local governments. Transfer of ownership was a two-step process. Soviet-style worker cells took over at each publication when the party went out of business. But after a few days, or at most a few months, it became apparent that the workers had neither the capital, nor the management and financial skills, to run newspapers.

Equally important, but less apparent, was the fact that there were no Western-type department stores, food supermarkets, car dealerships, or high-fashion shops that depend on large amounts of newspaper advertising to sustain their operations. City, county, or provincial governments stepped up and accepted responsibility for meeting newspaper payrolls and producing publications on a regular basis. For the average Russian, nothing changed. The Communist Party and local government were perceived as the same — and for many Russians, they still are. To fully comprehend this, it helps to recall that President Putin rules Russia not only as a successor to the democratically elected Boris Yeltsin, but also in the succession of Lenin, Stalin, and Gorbachev, whose official title was general secretary of the Communist Party. Today, local governments continue to exercise absolute control over the flow of information, and editors and journalists are government shills.

Then there is the problem of commercial tradition — or lack thereof. In the developed world, advertising revenues finance a vibrant, independent press. But the potential to sell enough advertising to support daily newspapers does not exist in Russia's heartland. Comparison shopping, discounting, clearance sales, pay-later gimmicks, promotions, premiums, and coupons: All these are alien to the Russian tradition. Department stores and supermarkets are not organized to promote themselves aggressively. Although

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there is plenty of slick, sophisticated merchandising in Moscow and St. Petersburg, even in the largest provincial cities the main department store is virtually the same as in Soviet times — except Western products are offered for sale. Clothing is piled on crude tables. There is no effort to promote particularly attractive or well-priced items. While Western made small appliances such as clocks, calculators, blow dryers, CD players, and tape recorders sell well in department stores, sales are properly attributed to pent-up demand, not aggressive merchandising. (In late 1999, Ekaterinburg's main department store sold Japanese made electronic calculators on one floor, while on another floor invoices were calculated on an abacus.)

In every sizeable city, advertising and news are split off from each other, with each presented separately in stand-alone publications. For at least the past 50 years, the Communist Party owned a classified advertising commercial paper in every city where it owned a large newspaper. Frequency was daily, weekly, or monthly, depending on the city's size. Even doctrinaire Marxists needed an ad medium for a family to dispose of a deceased relative's clothes, furniture, and appliances, as well as to create a used car marketplace, without which new autos cannot be sold to the public. Today, all cities of more than 300,000 have several of these periodicals. All are privately owned. Many are hugely profitable. Several publish nationwide, with distribution in the millions and classified ad counts well up in the thousands. The two largest are *Extra-M*, with a circulation of 3 million, and *Everything-for-You*, which is produced in 45 different regional editions and has a circulation in excess of 2 million.

Even doctrinaire Marxists needed an ad medium for a family to dispose of a deceased relative's furniture and appliances.

Almost all classified advertising shoppers list hundreds of cars and apartments for sale. In some regions, there are even more barter offerings. After all, many state enterprises pay their workers three to four months in arrears, and barter is part of survival. In regions where sugar beets are grown or electric light bulbs manufactured, the local classified publication usually has hundreds of swap ads for large quantities of refined sugar or light bulbs. Workers are paid in-kind and must barter their in-kind wages for other commodities they need.

Private enterprise "shoppers" consisting solely of advertising dominate the classified marketplace. I am unaware of any Russian city where a general circulation daily newspaper is itself the classified advertising leader. U.S. newspapers are not viable without classifieds. Forty to 50 percent of advertising revenue in U.S. and U.K. metropolitan dailies comes from classifieds, and a substantially larger percentage of profits. But prospects are dim for developing large classified ad sections in Russia's daily newspapers. Such

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advertising's effectiveness is directly related to ad volume. Job applicants, barterers, used car buyers, and apartment seekers get their best results from the medium with the most offerings. They will pay a premium to advertise in a publication with 500 offerings in preference to one with 50, regardless of the publication's circulation or content. In classified advertising, success builds on success.

There is also a sociological factor here: the enduring Marxist notion that advertising is exploitative and dirty. The powerful journalist associations, as well as most individual journalists, still believe that writing for a news publication with large ads compromises a journalist's integrity. News and commentary should not be mixed with crass commerce. This bias is unique to countries emerging from communism. Newspapers in capitalist countries have always presented advertising and news side by side. In 1800, the most common name for an American newspaper was "The Advertiser," often in combination with "Gazette," "Chronicle," or "Courier."

Ethics in black, white, and gray

Corruption is, of course, endemic in Russia. Payoffs and kickbacks are routine: Doctors and dentists will only see patients if they make advance payments above the official fee schedule. Baggage at airports is regularly judged overweight unless the person behind the counter receives a payoff (preferably in U.S. dollars). Cabinet ministries are coveted because subordinates and appointees must regularly remit to the boss. Breaches of Western ethical standards are not only tolerated, but also sanctioned, sometimes institutionalized.

So it should come as no surprise to learn that paying reporters and editors for the publication of news stories — particularly on page one — is generally accepted as fair and appropriate. Most journalists I spoke with thought it proper to accept payment for a news story. They saw it as compensation for value received. A regional editor explained why he disagreed with the notion that nothing on page one should be sold. When Ford opened a parts distribution center in his city, the newspaper's lead story was about the building's dedication. It included a picture of the mayor cutting a ribbon. The same day, a Taurus ad with a picture of the car, logo, and descriptive copy appeared on page five. In the United States, Ford would have been charged for the Taurus ad, but it would be considered unethical to receive payment for the front-page news story. However, the Russian newspaper charged Ford more for the page one story than for the ad. Both were perceived as commercial promotions, but the front page story was of more use to Ford.

The distinction U.S. editors make between front page news and advertising copy is arbitrary and contrived, the editor argued. In another city, government officials pay local journalists for publishing their press releases. In an environment where all newspapers are government funded, this was

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defended as a form of subsidy. One mayor's spokesperson challenged me to ethically distinguish between indirect and direct taxpayer subsidy. Russians have no institutional memory of independent, objective newspapers. The grandparents and great-grandparents of today's journalists never read a newspaper that was not a Communist Party propaganda sheet.

The notion that lying about money is inevitable makes the sale of advertising particularly difficult. All circulation figures are assumed to be overstated and distorted. Before buying newspaper space, an advertiser or ad agency tries to determine the magnitude of the circulation's misstatement, as well as the rate schedule's misrepresentation. Excessive taxation and regulation make publishers reluctant to allow auditors to review circulation and financial figures. Each advertising sale is an ad hoc negotiation.

To all kinds of financial questions, I almost always received the same response: Do you want "black," "white," or "gray" figures? Do you want real numbers or official ones? This was true whether I was asking a publisher about sales and profits, a journalist about wages and benefits, a newspaper salesperson about circulation, or an advertising executive about space rates and commissions. No one I talked with expressed shame or remorse about a financial lie.

Many post-communist media laws were intended to perpetuate Marxist thinking. Publications cannot compete on the basis of price. A national anti-monopoly statute makes it a crime to sell individual newspapers below production and distribution costs. Since government owned newspapers are printed on state owned presses, this is an often insurmountable bar to market entry by independent publications. Similarly, use of the word "discount" in advertising rate cards or subscription promotions is prohibited. Advertising is taxed to the advertiser at a higher rate than most other services. A 1993 law caps at 40 percent the amount of space in each issue that can be devoted to advertising. Most U.S. metropolitan papers allocate 50 to 60 percent of their space to advertising; a few have more than 60 percent. A similar restriction in the U.S. would kill off many big city newspapers, particularly Sunday editions.

The politicians' press

As a consequence of these historical, sociological, and cultural factors, the regional newspaper's candidate almost always wins local elections. Opponents get virtually no press coverage. Favored candidates have a free ride, because bureaucrat-journalists in the employ of local governments never question the mayor or governor's favorites about character, finances, programs, voting records, or corruption. Inquisitive, fair-minded journalists are kept tightly in check. Moreover, since no regional newspaper subscribes to an international wire service, Russians outside of Moscow and St. Petersburg are ignorant of the larger world of

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which they are a part. This makes xenophobia and increased hostility to the West inevitable.

Several local jurisdictions passed laws in the 1990s intended to impede, if not prevent, investigative reporting. The 1994 Bashkortostan Code on the Rights and Responsibilities of the Media defines "invasion of privacy" as the publication of any information about a person without the person's prior consent. This means that even if it is proven in court that a person stole or took bribes, the thief or bribe-taker can sue a newspaper and win if those facts are published without his permission.

In November 1999, when I met with newspaper executives from 31 different publications in Sverdlosk Oblast (Russian Asia's most populous county, where Boris Yeltsin once served as governor), it was pointed out that government media ownership scares away commercial advertisers. Buying advertising space in a mayor or governor's publication is seen as a form of a payoff, nothing more. Small-time entrepreneurs see voluntary advertising — even when it has the legitimate purpose of selling merchandise — as a potential source of trouble. If opposition candidates come to power, they will be harassed (tax police, fire wardens, building inspectors, health code investigators will visit them). If the mayor or governor's candidates prevail, the ante for the next payoff will be upped.

Several local jurisdictions have passed laws intended to impede, if not prevent, investigative reporting.

To executives like the ones I met, U.S. newspapers are considered interesting curiosities, not models to be copied. Russia's current newspaper publishing system is defended and praised. Government involvement in news coverage is not challenged, often enthusiastically welcomed. Editors and reporters who make individual news judgments about the importance, or relevance, of political press releases, legislative agendas, or public events are seen as usurping elected officials' prerogative to communicate directly with the electorate. Provincial front pages usually consist of partisan political and economic commentary, staged pictures of politicians cutting ribbons or greeting foreign dignitaries, and government press releases. They are dull, without immediacy. Over the years, I have routinely asked editors why a potential subscriber should buy their paper in preference to the competition. The answers were always similar: "Making comparisons between newspapers is unethical." Communist notions about head-to-head competition still prevail.

Local newspapers are virtually devoid of crime, business, or political coverage in which all sides of an issue are presented. News about roads, schools, art museums, and industrial policy is considered insignificant and trivial.

By many measures, the most straightforward, objective regional news appears in locally edited inserts in the country's two most popular weeklies,

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Youth Pravda Weekly (circulation 2 million) and *Argument & Fact* (circulation 3 million). Headquartered in Moscow, each publishes more than a dozen regional editions printed at local production facilities throughout the country. Regional editions contain snippets about area events, usually unembellished. In most medium-size cities, the two big national papers outcirculate the indigenous product. In Primorske Krai (Far East), it is estimated that the *Youth Pravda Weekly* sells 37,000 copies and *Argument & Fact* sells 45,000. Although the inside pages contain articles with political content and bias prepared in Moscow, most page one articles have more in common with the *National Enquirer* than with U.S. and Western European front pages.

At Ekaterinburg Humanitarian University and South Urals State University, I asked journalism seniors which newspapers they read regularly. Almost all read *Argument & Fact* and the local all-advertising shopper. A majority also read *Youth Pravda*. In both classes, less than 10 of 60 students read the local daily.

In every provincial newspaper, the best-read feature is the TV schedule.

In every provincial newspaper, the best-read feature is the TV schedule, which all newspapers publish. The more comprehensive, the better. Small rural weeklies devote one-fourth of their space to TV programs. Circulation doubles, sometimes triples, on Thursday or Friday when most dailies publish the next week's TV schedules. *Youth Pravda* claims to publish the country's most comprehensive television listings. One of its regional editors attributes its continuing growth to three features: detailed TV schedules, superior crossword puzzles, and a sexy front page — in that order.

Horoscopes are another Russian newspaper staple. Some daily newspapers publish three or four different astrological features. Horoscopes were also popular when the communists ruled. The importance of astrology in Russia is linked to 70 years of doctrinaire Marxism during which citizens were taught that religion was the opiate of the masses. Astrology, not religion, explained the unfathomable.

Last spring, I spent five hours with executives and staff at *Vladivostok News*, whose claim to 80,000 circulation (the true figure is approximately 50,000) makes it Russian Asia's largest daily (four days per week, Tuesday through Friday). Founded in 1991 shortly before the Soviet Union broke up, its young editor proudly describes it as the first "alternative newspaper" east of the Urals. This means that it was always owned by the municipality, instead of first by the Communist Party. But it was never independent. It just had different sponsorship, different loyalties.

The company's 120 employees include 46 journalists and six English language Internet employees, a substantial portion of whose salaries are paid by

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USAID. A reporter's nominal monthly wage is $175. Bonuses, awarded arbitrarily by management, as well as payoffs from politicians and businesses, increase most journalists' wages outside the tax collector's purview. Some earn more than the editor in chief.

Notwithstanding its connection with Vladivostok's officialdom — or maybe because of it — *Vladivostok News* was forced to secure a three month bank loan at an annual interest rate of 46 percent during the 1998 financial crisis. The Russian central bank required that all loans be at a minimum of 32 percent, while a local Vladivostok bank added a 14 percent surcharge. During this period, reporters were not paid.

The city government's officially acknowledged financial control has not scared away outside "investors." Approximately 25 percent of the newspaper's shares are owned by journalists or corporations. Nobody at the newspaper was forthcoming about how the corporations and journalists paid for their shares, but the journalist association's executive director said it was common knowledge. Politically wired journalists were given shares as gifts, and companies doing business with the city paid the mayor personally for their shares.

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In 1997, the newspaper's news and business staff moved from the press-printing palace to a new, free-standing, six-story building. How it was financed is an enigma. Both the editor and the publisher say the building was paid for with cash. There is no mortgage. Pressed as to how they accumulated so much cash in less than five years in a confiscatorily high tax environment, their response was drop-dead cocky: business acumen.

The editor of a national paper's Far East edition has another explanation. The mayor provided his institutional flacks with a modern building, fancy offices, new furniture, and luxury appointments, such as a credenza bar with a refrigerator off the editor's office and exotic art in the conference room. Before 1992, the Communist Party regularly rewarded favored newspaper executives and reporters with luxury apartments, private cars, vacation dachas, and trips abroad. *Plus ça change.*

The city's journalist association — which represents almost all professionals — has legal status. It can challenge a newspaper's management on any editorial position it takes, including commentary on political and economic issues. Journalists who object to the way in which their copy is edited can also appeal through the association to an independent arbitration board.

Vladivostok has both upscale and downscale all-advertising periodicals. Ten years after Russia's leadership acknowledged that the idea of a classless society was both unobtainable and undesirable, advertising publications in

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big cities are organized according to economic classes. The city's most formidable upscale, all-advertising publication is *Business Compass*, an 88 page magazine with a coated-paper color cover. In addition to several thousand individual classified offerings, there are small display ads promoting Rado, Tissot, Longines, and Raymond Weil watches; Pampers, Pantene, and Tampax personal products; Tetley and Lipton teas; Nestle, Mars, and Cadbury candy bars; Winston, Parliament, Camel, L&M, and Marlboro cigarettes; Parker and Waterman pens; and Zippo and Ronson lighters. In Vladivostok, as in Moscow and St. Petersburg, a mysterious cadre of newly affluent "businessmen" has lots of money to spend.

Rob Coalson, a former Russian Studies instructor at Cornell who heads the National Press Institute's business development department, says there are no more than five independent daily newspapers in Russia financed by advertising revenues, excluding oligarch owned national newspapers. Press observers at the U.S. embassy in Moscow and the U.S. consulate in Ekaterinburg agree.

A model that works

ONE OF THE FEW DAILIES which may survive and prevail is *Chelyabinsk Worker*, which is published in a grimy, besooted industrial city of 1.2 million in the Ural Mountain foothills. Over a period of 10 hours last November, I met with *Chelyabinsk Worker's* editor-publisher, Boris Kirshin, as well as subordinate editors, journalists, and advertising salespeople. The paper has developed a unique economic arrangement that makes financial independence a realistic and realizable goal. Its corporate structure acknowledges both advertising's indispensable role in media independence and Russia's deep-seated cultural bias against it.

Chelyabinsk Worker is the corporate umbrella for three stand-alone periodicals: a six to eight page broadsheet daily newspaper, an eight page weekly tabloid for display ads, and a 16 to 32 page weekly tabloid for classified ads. The classified advertising publication has a circulation of 18,000 and sells for four rubles (10 cents). The display advertising tabloid has a circulation of 200,000 and is distributed free. The daily (Tuesday through Saturday) claims a circulation of 41,000 and also sells for four rubles. (All circulation figures are probably substantially overstated.) Prior to January 1992, when all party members were forced to subscribe, *Chelyabinsk Worker's* circulation was 360,000.

Revenues from *Chelyabinsk Worker's* stand-alone advertising tabloids are adequate to support the newspaper's news, production, and distribution operations. The newspaper company funds its independence with advertising sales, but has adjusted the format (news and advertising in separate publications) to comply with Marxism's ever-present vestiges. While the combination of advertising and news on the same page or at least in the same pub-

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lication is a long established custom in the West, the format is not essential to financing independent newspapers. What is important is to capture the three revenue streams — circulation, display advertising, and classified advertising — necessary for financially stable newspaper enterprises. *Chelyabinsk Worker* has done this.

The fact that the display advertising tabloid is free and the classified advertising publication costs 10 cents is explained by the different way the two publications sell advertising. Ads in the display advertising tabloid are sold for cash or barter, as is typical in the United States. Ads in the classified advertising tabloid are free, but each ad must be submitted on a dated coupon clipped from the publication. Coupons cannot be photocopied or faxed. If an individual wishes to publish the same ad several weeks in a row, a new copy of the publication must be purchased each week. If a person wishes to sell both a car and a piano, two copies must be purchased and two separate coupons submitted. Each of the 4,200 classified ads in the November 5, 1999 issue represented a 10 cent newsstand sale. Although the classified tabloid is an all-advertising publication, most of its revenue comes from circulation sales. In a country where neither credit cards nor checking accounts are widely accepted, this is a practical way to sell small ads in large volume. In addition to circulation revenue, if an ad includes special features — if it is more than 10 words or has borders, boldface type, logos, or illustrations — advertisers must pay substantial premiums.

Kirshin is one of the few Russian editors who criticizes incumbent municipal officials. And the political powers that be have retaliated through the courts. The paper may be repossessed by the Chelyabinsk Oblast, the surrogate for the Communist Party which formerly had title to it. The Oblast Committee for Securities Claims alleges that in 1992 the newspaper did not properly follow regional privatization ordinances. Six times during 1999, management was forced to defend various aspects of its privatization plan. Since all court decisions went against the newspaper, the umbrella corporation technically liquidated itself in November. If all court appeals fail, Kirshin believes this will make repossession more difficult.

The Russian post office

THE POWER OF MAYORS and governors to silence opposition media goes beyond newspaper ownership. Thousands of small-circulation periodicals with a news or political component are produced in provincial cities and towns. Almost all are housed in government owned press-printing palaces. This means that most voices of potential dissent are government tenants. The government also controls pricing and scheduling on the only high-speed printing presses in town.

There are also numerous problems with distribution, most of which is done through post office affiliates that also operate most street kiosks.

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Alternative delivery systems, such as FedEx and DHL, prosper in developed countries because government postal organizations are inefficient. Russia's acute financial problems magnify its postal system's universal inefficiencies. Periodical distribution has declined approximately 80 percent since 1991, and volume shows no sign of increasing. At the same time, rates have been hiked annually.

Delivery to the ubiquitous Soviet-built, worker high-rise apartments is unreliable. Buildings with six floors or fewer rarely have elevators. Most were built without mail boxes in the entryway. If mailboxes were included in the original construction, most are now worn out, broken, and do not lock. Mail is dumped indiscriminately in entrance halls by postal workers. Some reaches the addressee. Much does not.

As in Soviet times, the post office maintains all subscription lists, as well as payment and billing information. Newspapers do not have ready access to their own records. This is, of course, the opposite of the practice in the West, where publishers control subscriber lists, billing, and labeling, as well as renewal letters and promotional literature mailing schedules. When these become postal bureaucracy functions, publishers no longer control their destinies. Promoting one publication in competition with another is virtually impossible, as are billing and collecting on special schedules. Promotional efforts are equalized at the lowest possible level. This Soviet system allows Big Brother to know who subscribes to which publications, and whether subscription bills are current.

As in Soviet times, the post office maintains all subscription lists, as well as payment and billing information.

Although there are no limitations on entrepreneurs owning kiosks, overregulation makes kiosk operation unattractive to most private operators. Kiosks are legally required to have over 100 publications available for purchase at all times. Promoting a particular publication, special edition, or new feature, and special pricing are legally prohibited. This is a carryover from the Marxist notion that all periodicals should be displayed more or less equally. In addition to periodicals, kiosks sell cigarettes, candy, toiletries, snacks, sodas, beer, trinkets, film, batteries, and drug sundries. They are more like convenience stores than newsstands. Kiosks are an essential part of Russian merchandising. Even in small cities, there are several hundred.

In isolated hamlets, local governments publish newspapers in obscure, almost extinct, languages. Editors and journalists who produce them do so without benefit of dictionaries or grammar books. The importance of newspapers in Yakutian, Altai, Tartar, Baskir, and Chuvash cannot be underestimated. Peasants and herdsmen have almost no other contact with national politics or the outside world. Provincial governments also publish dailies in better known languages such as Ukrainian, Turkish, Uzbek, and Yiddish.

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Herman J. Obermayer

Last March I spent several hours with the staffs of *Golden Horn* and *BusinessARS*, two weeklies in Russia's Far East that claim circulations of 20,000. Both editors said their publications were "independent" but were unable to name a single nongovernment shareholder when pressed for facts to support the claim. Both are local government tenants, printed in a press-printing palace, and use all official press releases unedited. Neither will be economically self-sufficient in the foreseeable future, if ever. Still, through the years both papers have received substantial technical assistance and financial support from the National Press Institute, USAID, Eurasia Foundation, and USIA, all funded by the American taxpayer.

A better approach

WHAT, IF ANYTHING, can be done to meliorate these depressing realities? I believe the U.S. government's approach to media aid in Russia is unsound and wrongheaded. It is futile to try to promote the development of independent newspapers where the advertising potential is not great enough to support them financially. Russia's retailing and advertising infrastructures will not be changed quickly, if at all. Western sponsored aid programs will certainly not change them. One USAID funded organization, the National Press Institute, has trained 130,000 Russian journalists and news executives in 2,800 workshops and seminars since 1992. What came out was the same thing that went in: bureaucratic functionaries and propagandists. To continue the current U.S. assistance programs is throwing good money after bad.

Media assistance programs should start at the beginning, instead of the end. Mid-career training for Russian journalists, editors, and news executives will continue to be an exercise in futility until university faculties and curriculums are reformed. Journalism professors must learn that Marxist methods of gathering and disseminating news are inefficient and socially destructive.

Unless journalism education standards are changed, editors and reporters will continue to think like their communist predecessors. Graduates of the country's 65 officially recognized university journalism departments enter the work force with virtually no exposure to Western concepts of objective reportage, journalism ethics, financial independence, or the media's role as government watchdog.

In 1999 there were approximately 11,800 Russian journalism students. One-third attend the country's three largest universities: Moscow State, St. Petersburg State, and Urals State. Experienced newspaper and broadcast professionals are almost never accredited to university faculties. Most deans and lecturers have held their positions for more than a decade. They were trained as Marxists, and there has been almost no professional-level training for college faculties since the Soviet breakup. While course titles and descrip-

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tions were revised in the early 1990s, reading assignments and lecture content were only changed superficially, cosmetically.

The staples of journalism college curriculums in pre-Yeltsin Russia were, "Theory and Practice of a Party Press," "Dialectic Materialism," "Historic Materialism," and "Marxism-Leninism." Journalism studies are still administrative parts of philology departments, where practical journalism courses are rarely, if ever, taught. Today's most popular courses include, "Slavic Philology," "Theory of Literature," "Applied Linguistics," "Mass Media Techniques," and "The Culture of the Russian Community Abroad."

The five-year officially sanctioned syllabus includes 186 weeks of lectures, of which 170 deal with theory and 16 with practical journalism. By U.S. standards, the practical courses are abstractions. None include segments on writing stories under deadline pressure, or searching data bases on-line for information.

Faculty biases, politics, and turf wars are as much a part of Russia's college scene as they are in the United States. Foreign consultants, advisors, or visiting professors with new ideas about curriculum content will not be welcomed with open arms. They will be seen as interlopers and meddlers, particularly if they are sponsored by a U.S. government agency.

On the other hand, I believe, most journalism academics — regardless of their political orientation and prejudices — would gladly accept expense-paid trips to the U.S. to observe its robust, independent media. In the groves of academe, foreign junkets were routine perks long before glasnost and perestroika. Even the most skeptical observer would return with a new understanding of America's free press. Bringing all of Russia's college journalism teachers to America for a few weeks would probably cost less than is currently being spent on in-country training.

Western-style newspapers and broadcast outlets, which depend on advertising funding, will not succeed in post-communist Russia. Still, if the country's debilitating corruption is to be rooted out, young journalists must understand what the term "free press" really means. In the near future many will work for new high-tech media with a different economic model. Until the perspective of journalism college faculties changes, a broad-based consensus to repudiate dishonest politicians will not develop.

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BOOKS

The Politics Of the Supreme Court

By KEITH E. WHITTINGTON

LUCAS A. POWE JR. *The Warren Court and American Politics*. THE BELKNAP PRESS OF HARVARD UNIVERSITY PRESS. 566 PAGES. $35.00

EARL WARREN CASTS a long shadow. Even if Warren had never been appointed chief justice of the United States, he still would have been a major figure in twentieth century American politics. In the 1920s and 1930s, he developed a reputation as a tough but progressive DA in Alameda County, California. In 1938, he swept into the state's attorney general's office, having won both the Democratic and Republican nominations. There he continued his fight against vice, corruption, and organized crime, but is best known for his role in strongly supporting the wartime internment of Japanese-Americans. In that same year of 1942, Warren was elected governor of California for the first time. Although he unsuccessfully advocated the creation of a comprehensive state health insurance system and the prohibition of racial and gender employment discrimination, he was far more successful in overseeing the great wartime and postwar California boom. Voters rewarded him with an unprecedented three terms in office. In 1948, he was the Republican nominee for vice president in Thomas Dewey's surprising loss to Harry Truman. But in 1952, his presidential ambitions were dashed by the Eisenhower surge. At the age of 62, Warren's political career had reached a plateau.

At first glance, an appointment to the Supreme Court would seem to be an odd capstone to Warren's career. Although a wildly popular California politician, he was known more for being likeable and honest than for any special legal acumen. In 1953, the court was only 16 years removed from the near miss of Roosevelt's court-packing plan, and the relatively supine New Deal court would hardly seem like an attractive home for a career politician who harbored presidential aspirations. Eisenhower himself thought the court would be "pretty rarefied" for Warren. But the president had offered the governor the first opening on the court as a consolation prize for having been excluded from the Cabinet, and some Republicans, such as Richard Nixon, were eager to get Warren out of California and, hopefully, out of politics. Having already decided that three terms as governor were enough,

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Warren held Ike to his promise when the first vacancy on the court proved to be that of chief justice. No one could have foreseen that Warren would come to rival the great John Marshall as the most significant chief justice in the court's history.

In this readable and valuable history, University of Texas law professor Lucas Powe seeks to put the Warren court in its proper political context. In his preface, Powe bemoans the loss, "over a quarter century ago," of a once "flourishing genre of Supreme Court scholarship intertwining the Court and politics" nurtured primarily by political scientists. At least since the 1930s, political scientists had been deeply concerned with what Martin Shapiro (now in the Berkeley law school) once termed "political jurisprudence," the effort to treat the Supreme Court "as part of the American political process, rather than as a unique body of impervious legal technicians above and beyond the political struggle." Scholars such as Princeton's Edward Corwin, Alpheus Mason, and Walter Murphy and Harvard's Robert McCloskey were not only leading political analysts of the court, but also leading experts on the Constitution. By the early 1970s, however, the Constitution had fallen into the hands of the law professors, and political science had fallen into an "abyss" of sterile quantification and abstract theorizing.

Some within political science have already vehemently objected to this characterization of the field by an interloper from the law schools. Powe's account of the decline and fall of scholarship relating the Supreme Court and national politics is exaggerated. It understates the significance of the newer forms of political science research into the law and the judiciary, including work that has argued that the Supreme Court has received too much scholarly attention. Powe also seems to have underestimated the resurgence over 15 years or so of exactly the type of analysis that he extols in this book (though he does briefly note the existence of "some younger scholars" who are "similarly striving to combine law and political science"). Such work no longer monopolizes the field of public law, but it is an increasingly vital genre that is practiced at a variety of institutions across the country. Happily, it is also an increasingly interdisciplinary genre, with astute contributors as likely to be found in law schools as in political science departments. With some overstatement, Powe declares that his book "attempts to revive the genre of Supreme Court scholarship that focuses on the relationship between the Supreme Court's decisions and national politics."

The Warren court would seem to be a natural subject for such an attempt. Complaints that the Warren court was "playing politics" began stacking up almost from the moment that Warren assumed the bench, and conservatives have always regarded the Warren court as the very exemplar of a politicized court. This is not Powe's concern. He notes that he was once "inspired" by and "worshipped" the Warren court, but time seems to have cooled those passions. More important, his current interest is "neither to cheer nor boo; it is to understand and explain." From this perspective, as Powe might have emphasized more, *all* courts are politi-

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cal. The Supreme Court is a political body. It sits at the top of the third branch of government, whose ranks are filled with politically connected lawyers who regularly make influential decisions about important political matters. Activism was merely the particular expression of the politics of the Warren court, and that historically surprising activism requires a political explanation.

Both Powe's strident call for a revival of this form of political analysis of the court and his particular contribution to the genre are most welcome. The Warren court was in desperate need of such synthetic attention, and Powe provides a readily accessible and compelling overview of the Warren era. For those who are not familiar with the Warren court, now over three decades in the past, *The Warren Court and American Politics* offers a fine introduction. For those who know the Warren era already, Powe offers a valuable and persuasive interpretation of the court's actions that should be the starting point for future thinking on the subject.

THIS BOOK IS, first and foremost, "a synthetic history of the Warren Court." As such, it is more traditional in form and content than Powe would have us believe. It provides roughly chronological coverage of the court's work from 1953, when Warren assumed the bench, to 1969 when he retired, with a primary focus on constitutional cases. Powe breaks the Warren court down into three basic eras. During the 1953 through 1956 terms, the Warren court launched its first constitutional volleys and touched off a firestorm of protest. Most significantly, the court handed down a decision in the school desegregation cases, *Brown* v. *Board of Education*, in 1954 and followed that up with its "all deliberate speed" order in *Brown II* the following year. The court also took on a series of domestic security cases addressing the state and federal governments' efforts to root out communists. Those cases culminated in "Red Monday" in June 1957, a month after the death of Sen. Joseph McCarthy, when the court handed down four important decisions extending greater protections to admitted and suspected communists against criminal prosecution, legislative investigation, and dismissal from government employment.

This bold start to the Warren era was soon derailed. Powe characterizes the 1957 through 1961 terms as a period of "stalemate." He opens this section with a brief overview of the congressional attack on the court in the summer of 1958. Though largely forgotten now, congressional opponents mustered substantial support for anti-court legislation and sent a clear signal to the court to back off on the domestic security cases. Southern Democrats, already outraged over *Brown*, joined anti-communist Republicans in support of several measures to overturn recent criminal procedure and domestic security decisions. More ominously, the Senate gave serious consideration to legislation that would have prevented the appeal of certain kinds of domestic security cases to the Supreme Court. Although Congress was not about to pass such legislation, the Senate did come within a single vote of passing a House measure that would have eliminated the doctrine of the implicit pre-

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emption of state laws by federal legislation. The bill would have eliminated a major tool that the court had used to strike down a wide range of state laws covering subjects from domestic security to labor regulation, and it would have freed the state legislatures to develop more restrictive policies than the court currently allowed. As Edward Corwin, the originator of Roosevelt's court-packing plan, wrote to the *New York Times*, the court had needed its "nose well tweaked." The court got the message and loosened the reins on anti-communism. During the same period, the court bogged down on racial civil rights in the face of Southern "massive resistance" and congressional foot-dragging. After the murky directive of *Brown II* in 1955, the court largely left the lower courts to their own devices until 1968, when it belatedly rejoined the civil rights movement and began to insist on immediate school integration.

The eight years of the Kennedy and Johnson administrations were the heyday of the Warren court, or as Powe labels the 1962-68 terms, "History's Warren Court." The court moved in an aggressively liberal direction on numerous constitutional fronts.

In 1960, John F. Kennedy won the presidency over Richard Nixon. Although Warren had initially thought Kennedy was "too young for the job," he quickly developed a close relationship with the new president. Unlike Eisenhower, Kennedy gave full and public support to the "dignity and wisdom" of the Warren court and its sole responsibility to interpret the Constitution. Perhaps more important, in 1962 Kennedy added a crucial fifth vote to Warren's liberal coalition when the great voice of New Deal judicial restraint, Felix Frankfurter, suffered two debilitating strokes. The torch was finally passed from the New Deal liberals whose primary commitment was to democratic power to the New Frontier/Great Society liberals whose primary commitment was to progressive results. The eight years of the Kennedy and Johnson administrations were the heyday of the Warren court, or as Powe labels the 1962-68 terms, "History's Warren Court." The court moved in an aggressively liberal direction on numerous constitutional fronts, from racial civil rights to legislative apportionment to church-state relations to freedom of speech to criminal justice.

Powe provides a fairly lively and opinionated survey of the key constitutional debates and opinions of the Warren era, and he does not hesitate to point out when the court's reasoning was sloppy or its assumptions wrong. This overview of the legal terrain is interspersed with brief discussions of the changing political context of the judicial deliberations. The often critical

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changes in judicial personnel and the politics of judicial nominations and confirmations are duly noted, as are the political biographies and leanings of the new justices. More notably, Powe highlights the changing responses of various external constituencies for the court's work. Southern congressmen alarmed by *Brown* looked for influential allies in their assault on the court. They briefly found them when the court took on the anti-communists, but had less luck with the politically weak conservative Catholics and Southern Protestants when the court took on church-state relations. Influential legal elites, including the American Bar Association, respected state and federal judges, and academics, harshly denounced the "political" court of the 1950s, but shifted into the court's corner in the 1960s. Entering the apparent "political thicket" of legislative apportionment in the early 1960s, the court found an enthusiastic "latent consensus" that hailed the elimination of rural rotten boroughs and the shift of political power to the cities.

These political asides provide valuable insights into the relative success of the Warren court. In 1957, the Yale political scientist Robert Dahl wrote that the court was best understood as "inevitably a part of the dominant national alliance." For many, Dahl's argument, focusing as it did on the 1937 "switch in time" and the subsequent judicial restraint, seemed immediately repudiated by the Warren court's activism. Powe provides a much needed extension of Dahl's point, recognizing that judicial activism as much as judicial restraint can serve the purposes of the national elite. Powe punctures the liberal mythology (and conservative bogeyman) of the lonely Warren court single-handedly reforming society. The court was hardly acting alone. As Powe notes, "The best description of the period is that all three branches of government believed they were working harmoniously to tackle the nation's problems. It was simply a matter of determining which institution was best suited to handle a specific problem, and each went forward in its own way knowing the others also were seeking complementary results." The justices of the Warren court may have been "men of action, ready and willing to act," but they were also good politicians and knew when they had support and when they did not. "For a brief period, at least, those the Court was ready to help were those the national (but not state) legislature was enthusiastically helping. That is not going against the grain; that's redundancy."

THEY WERE politicians firmly rooted in the mainstream establishment of the postwar federal government. With few exceptions, their actions reflected the beliefs of the national political elite. Powe concludes with one of his more provocative points, "the dominant motif of the Warren Court is an assault on the South as a unique legal and cultural region." Although the Warren court overturned huge amounts of settled law, it did so primarily in the service of reforming the South. Following the argument of the famous "Footnote Four" of the 1938 *Carolene Products* case, academics have largely justified the activism of the Warren court as the defense of disempowered minorities who would not be protected by the

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democratic process. By contrast, Powe argues, "If discrete and insular minorities are the key, then possibly the court could be better seen as attacking (rather than protecting) them on a national (rather than local) scale: the white South, the pre-Vatican II Catholic hierarchy, rural legislators, the local criminal justice system, and those remaining few who believed domestic communists were a threat to the nation." The idea of eliminating the international embarrassment of Jim Crow was commonplace among national elites as the Cold War began to heat up in the late 1940s and early 1950s, even if no one did much about it until after the civil rights movement had broken the back of segregation. Despite the initial protests, the justices of the Warren court were confident that local police would quickly learn to live with the new rules of criminal procedure that federal officials such as J. Edgar Hoover assured them were crucial to modern, professional law enforcement. Mainstream Protestants of the 1960s welcomed the court's moves on religion, obscenity, and birth control.

Rather than systematically pursuing an argument about how the court might be best understood as a political institution operating in a political environment, Powe has chosen to write a history of the Warren court informed by politics.

The great virtue of such a political approach to analyzing the judiciary is that it is not limited to historical revisionism of the Warren court. These lessons are of general significance. The court does not stand outside of American politics, but rather is a part of it. That does not mean that judicial independence is a myth, or that judicial activism raises no problems for a democracy. But it does mean that judicial power is limited and that the court must be understood in terms of the politics of the time. The constitutional innovations of the Warren court were products of the generally confident and ascendant liberalism of the 1960s. The tentative conservatism of the Rehnquist court reflects the incomplete success of the Reagan Revolution. There is no shortcut to social and political change.

Unfortunately, Powe does not push his political thesis far enough. Rather than systematically pursuing an argument about how the court might be best understood as a political institution operating in a political environment, Powe has chosen to write a history of the Warren court informed by politics. Certainly this is an understandable and reasonable choice. There was a need for such a book, and there is undoubtedly a bigger audience for histories of the court than for social scientific analyses of it. This choice also allows Powe to do what law professors are generally trained to do: describe

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and criticize judicial opinions. Politics is often relegated to discrete, and brief, sections that bookend the case analysis and that many readers may find expendable.

Such choices may tend to reinforce the belief in Warren court exceptionalism. Powe does begin the book by briefly setting up the situation of the post-New Deal Supreme Court, but the book basically begins and ends with Warren's tenure. As many students of the court have observed, dividing judicial history by chief justice is fairly arbitrary, as Powe to some degree recognizes. The Warren court's complicated New Deal inheritance is shortchanged in Powe's analysis. At the other end, the chief voice and intellectual force of the "Warren" court was Justice William Brennan, who remained on the court for another two decades after Warren's retirement and continued to write important majority opinions until the end. Although Powe hints at the complications that Warren-era decisions would create for later courts, ending the book with Warren's retirement prevents a full consideration of that legacy.

Limiting the book to the Warren era also complicates Powe's central message that the court should be understood as a political institution. Powe is caught to some degree between the desire to demonstrate the value of the political approach to understanding the court — to showing that the Warren court cannot be understood in purely legal terms — and the more particular goal of supporting a specific political interpretation of the Warren court. For many readers, the latter argument is likely to swamp the former. Given that many already accept the basic notion that the Warren court was — legitimately or illegitimately — political in its orientation, Powe may merely reinforce caricatures with his account. Perhaps this is less of a problem for the audience that Powe seems to have first in mind: liberal law professors who view the Warren court as a font of justice. But in leaning against one stereotype Powe may have inadvertently played into another (though it should be emphasized that Powe's story is far more sophisticated than the usual complaints of judicial activism long advanced by the court's critics). At the same time that Powe admirably strives to place the Warren court within the context of the political history of its time, he tends to pull it out of its own institutional context.

Some consideration of the doctrinal and institutional legacies of the Warren court would seem particularly useful to such a political analysis. Powe emphasizes the Warren court's radical willingness to abandon judicial precedents, whether long held or newly minted, while carefully avoiding conflict with powerful political opponents. But Warren's departure did not quiet the court. Rather, the experience of the 1960s seems to have emboldened the court, which continues to be willing to strike down state and federal statutes as unconstitutional at a historically torrid pace. If anything, the Burger and Rehnquist courts appear to be even more willing than the Warren court to take on the other branches of the federal government. Although modern judicial activism may have begun in the national government's struggle to overthrow the racial institutions of the South, it has progressed far beyond

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those initial concerns.

Powe's analysis is an important starting point for understanding the modern court and its relationship to the political system, but it should only be a starting point. Additional work will be needed to add depth to Powe's many provocative claims about the Warren era itself and to extend the political analysis beyond the Warren era, but *The Warren Court and American Politics* is a useful contribution to a resurgent literature on the Supreme Court's place within American politics.

Women At Arms

By Lee Bockhorn

Stephanie Gutmann. *The Kinder, Gentler Military: Can America's Gender-Neutral Fighting Force Still Win Wars?* Scribner. 300 pages. $25.00

Laura Fairchild Brodie. *Breaking Out: VMI and the Coming of Women*. Pantheon. 350 pages. $26.00

During the past decade, America's self-anointed "New Military" has tried desperately to shed the rampantly sexist image the "Old Military" acquired after the infamous 1991 Tailhook scandal. Thus a March *Time* magazine profile of Commander Kathleen McGrath, who recently became the first woman to command a Navy combat ship, was the sort of photo-op puff piece New Military types dream about — a requisite paean to female empowerment, with McGrath shown barking orders to young men under her command, and one dutifully relaying current Pentagon spin about the "more inclusive" atmosphere female sailors bring to the "hidebound" military.

But an adjacent sidebar suggests that the truth about the military's experiment with sexual integration is a bit more complicated. It described changes being made to new warships to accommodate the growing number of female sailors: Bathrooms will now include increased ventilation "due to hair spray," and extra outlets and mirrors "for hair and makeup." And since women have complained that industrial-strength laundry machines on current ships ravage their unmentionables, washers will now include a "gentle cycle." The incongruity of this picture — that of women warriors supposedly just as tough and capable as men, who nevertheless need to worry about primping their hair and protecting their bras and panties — seems to have been overlooked by *Time*, not to mention the rest of the media, politicians, and even most generals. But it raises a serious question: What are we losing, both in the terms of combat readiness and our understanding of what it means to be male and female, in our drive to create a "gender-neutral" military?

Stephanie Gutmann provides a trou-

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bling answer in her courageous new book, *The Kinder, Gentler Military*. In the 1990s, she writes, "the brass handed over their soldiers to social planners in love with an unworkable (and in many cases undesirable) vision of a politically correct utopia, one in which men and women toil side by side, equally good at the same tasks, interchangeable, and, of course, utterly undistracted by sexual interest." The absurdity of this vision becomes clear when one ignores Pentagon press releases and feminist conferences and sees its implementation in the real world.

Gutmann begins by taking her gimlet eye on a visit to the New Military's version of boot camp. Once a transformative, tear-'em-down-and-build-'em-back-up experience designed to expose future soldiers to the stresses and strains of combat, boot camp in its new coed guise is now devoted to boosting recruits' "self-esteem." Past recruits had to earn the title of soldier; now they are "soldiers" from day one. They run "confidence courses" instead of obstacle courses — that is, when they run at all, since they are often trucked to various training sites instead of running or hiking as before. (And no wonder, given the higher incidence of sprained or broken ankles, back problems, and other lower body injuries among female recruits.) Much emphasis is placed on "teamwork," a concept used to camouflage the awkward fact that many jobs that require one or two men, like hauling away a 200 pound wounded comrade or handling a fire hose on a burning ship's deck, sometimes require twice as many women.

Can't keep up with your platoon on runs? In the past, your terrifying drill sergeant would have made your life hell. But now that could expose him to charges of "abusing the recruit," so instead recruits are separated into "ability groups." And if things ever get too tough, you can always call a "training time-out." In today's boot camp, it's your "effort" that counts, not your performance.

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Of course, women aren't to blame for all this. The military has been as prone as any other institution to today's therapeutic ethos. But the all-consuming drive towards female integration has exacerbated the problem, and boot camp is only the beginning. Gutmann takes a ride aboard the *USS Stennis* to witness the "New Navy" in action, and finds a Navy simultaneously distracted and paralyzed by sex. Many male sailors, subjected to endless training on the perils of sexual harassment, are reluctant to speak with or even look at their female shipmates in off-duty situations for fear of harass-

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ment charges. On the other hand, much of the rest of the mixed-gender crew spends its free time trying to find places on the ship where they can have clandestine sex. (This has resulted in some ships with pregnancy rates as high as 31 percent.) And when the ship won't do, there is shore leave. The New Navy has cracked down on sailors visiting their traditional haunts (bars and strip clubs) at port, so crews now make their own fun — as in the case of one group of male and female sailors from the *USS Abraham Lincoln*, who holed up in a Hong Kong hotel room in 1998 to engage in what the Navy later described as a "group sexual incident" involving "multiple sex acts."

THE HARM ALL THIS does to military readiness is maddeningly obvious. Yet hardly anyone seems to care — not even military commanders who should know better. One reason for this is a false lesson learned from the Gulf War — namely, that technological superiority is the most important asset for winning future wars, and thus the macho qualities that were once considered the essence of military culture, such as physical strength, toughness, and aggressiveness, aren't necessary anymore. After all, the point has been made, can't a woman push the button to fire a cruise missile as well as a man?

Gutmann makes short work of this myth. The lesson other nations learned from Iraq's humiliation is to avoid exposing their forces to annihilation by superior American weaponry and technology. A better model for future wars is not the Gulf, but Somalia — "three-block wars" in which smaller forces opt for guerilla warfare in cities, using civilian populations as cover to negate our advantage in firepower. In this type of war, where victory will depend not primarily on better weapons or greater numbers but on "individual cunning and cohesion of small, elite groups," everyone in our military "must be the real deal."

The Gulf War did illustrate why the dilution of training standards is such a serious matter, even for recruits destined for noncombat positions. It introduced the concept of "360-degree war," in which there is no real "front." (Witness the 13 soldiers in a supply unit supposedly far from the front who were killed in their barracks by a Scud missile.) In this type of conflict, even cooks and supply sergeants must be capable of defending themselves. In a "360-degree war everybody has to be able to do anything," according to Marine Gen. Jim Mattis. He tells Gutmann how one of his supply units in the Gulf, seemingly far from the action, suddenly found itself fending off a surprise Iraqi armored attack. As one drill sergeant tells Gutmann, "Who's defending your airfield? Your support weenies!" And even much noncombat military work is still rigorous physical activity that requires upper body strength. "In the Gulf War," Gutmann writes, "physical disparities were often glaring: men in many units took over tearing down tents or loading boxes because most of the women simply couldn't or wouldn't do these chores as fast."

Besides the practical problems, the double standards introduced by gender integration have had a corrosive effect on morale. An example is "gender-normed" standards on yearly physical tests. A high score on the test can be

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very helpful at promotion time; unfortunately, the women's standards are far lower than the men's, which naturally leads to a great deal of resentment. As a former JAG lawyer tells Gutmann, "It's one of the great paradoxes. . . . On the one hand, we're going to throw them together saying they're all the same, and then there are a million little exceptions and rules to keep [women] apart and treat them special."

The rush to place women in combat units devastates unit cohesion, which Gutmann describes as a type of love — "in its deepest, most selfless, Christ-washing-the-feet-of-the-lepers sense" — that enables men to accept the responsibility of placing their lives in each others' hands. But as Gutmann notes, "male/female love tends to work differently from single-sex group bonding. . . . It tends to be more selective, to be more exclusive. . . . Men and women are hardwired to 'cohere,' all right, but it's a very different kind of cohesion" — one that involves pairing off, not bonding in a larger unit. It is simply not possible in mixed-sex units to encourage the kind of seamless bonding and group cohesion that combat requires while also avoiding the kind of cohesion that "stimulate[s] jealousies, lovers' spats, and babies."

The New Military's feminized atmosphere also weakens one of the core attractions that used to draw a certain type of man to the service — a type that made for outstanding warriors. These men usually came from poor or working-class urban or rural backgrounds, were often raised by single mothers, and lacked any real male role models. The military offered them an attractive way to see the world, find adventure, and experience a kind of discipline and male camaraderie they couldn't find at home:

"It was once a happy marriage: young men who like to risk their bodies and shoot and blow things up, and a society that was plenty happy to let them do it when it needed to be done. And it served a special kind of social good besides keeping us free. . . . A training ground for many of our best men, it also took in some of the worst and it took that energy roiling around and put it to worthy service."

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In other words, the warrior culture of the military once offered a positive model of manliness for many young men whose only other option might have been lives of crime. But this culture did not simply serve to reform a few of society's bad apples; it also kept

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our forces ready to fight and win. This warrior spirit is still necessary for victory in the era of smart bombs, as Gutmann eloquently explains: "[W]e cannot have a military unless its first priority is military readiness, and that will mean looking for and keeping warriors. It is likely that most of them will be men. Ultimately, when we are involved again in a real war — not a work-out-the-kinks war against a much weaker force — the law of the jungle will still rule. The fiercer, angrier, most-blood-lusting force will win."

Young officers — the "middle management" that is so vital to readiness — are so disgusted with the military's feckless resistance to the attack on its culture that they are leaving in droves.

Gender integration is inextricably linked with perhaps the biggest problem now facing the armed forces — recruitment and retention. The conventional wisdom is that this problem is mostly due to the excessive number and duration of recent deployments, and low military pay compared to the opportunities of a sizzling civilian economy. But this explanation is not entirely accurate. A 1998 survey by the *Navy Times* of sailors planning to leave the Navy found that only 25 percent of officers cited "better opportunities as a civilian"; a far greater number cited reasons like "change in the culture" and "loss of confidence in leadership." The number of army captains leaving the service voluntarily has risen 58 percent in the past decade, and a recent survey of junior army officers revealed a shocking lack of confidence in the senior leadership. Young officers — the "middle management" that is so vital to readiness — are so disgusted with the military's feckless resistance to the attack on its culture that they are leaving in droves.

"It's not just about the money," writes one Army captain in an Internet newsletter. (Gutmann found the Internet to be one of the few places disgruntled Old Military types feel free to air their frustrations without fear of sanction.) "People used to stay in because they felt like warriors, making a difference, with commanders they respected, in units they were proud of. Those feelings don't exist today."

With one telling exception, that is: the Marines. In recent years they have been the only branch to consistently meet recruitment goals, and for good reason. "The Marines continue to sell themselves not as a place to work, but as a thing to be," one Gulf War veteran tells Gutmann. The Corps has wisely stuck by its policy of sex-segregated basic training, which avoids the pitfalls of sexual tension among recruits and allows the males to be pushed as hard as necessary without worrying about what effect that will have on females. Recruits of today who still long for the tough discipline and esprit de corps of the Old Military now often find themselves saying "Semper Fi."

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An interesting contrast to Gutmann's disturbing tale is the recent saga of the Virginia Military Institute. VMI defiantly retained its status as the last all-male military college in the United States until July 1996, when the Supreme Court declared it could not continue as a publicly supported, same-sex institution. In court, VMI argued that the presence of women would destroy the traditions and practices that made the school unique: specifically, the "adversative" method of its "ratline" — the verbal harassment, physical exertion, sleep deprivation, and near total lack of privacy to which entering cadets are subjected. After briefly toying with a costly privatization plan that might have ultimately destroyed the school altogether, VMI's administrators and alumni decided to make the best of a bad situation and accept the court's ruling.

The concept invoked by the school to describe its new lemons-to-lemonade attitude was "assimilation." The goal was to welcome female cadets into the VMI environment without fundamentally altering the school's essence. VMI was determined to avoid repeating the mistakes of the service academies (which had allowed the integration of women to degrade their standards and change their culture) as well as the example of another famous southern military school, The Citadel. (Shannon Faulkner, the first female cadet at The Citadel, was so overwhelmed by the hostile response of her male classmates that she dropped out within days.)

To this end, VMI's administrators, faculty, alumni, and students spent almost a year examining every aspect of VMI life to prepare for the arrival of women in the fall of 1997. In *Breaking Out*, Laura Fairchild Brodie — a former VMI faculty member, self-described "feminist," wife of the school's band director, and a member of VMI 's "assimilation" committee — provides an evenhanded, engrossing account of VMI's adjustment to coeducation.

To say that planning for "assimilation" was a challenging process would be an understatement. The committee had to consider whether to give women the same buzz-cuts as the men; whether to use the same standards for pull-ups on the school's fitness test; whether to jettison certain traditional VMI jargon (for instance, VMI cadets reported for misconduct are said to have been "boned"). They even had to consider how the intricate details of the female menstrual cycle would necessitate changes in physical training or VMI's traditionally open showers.

The early evidence suggests that VMI has weathered the transition well for the most part. Rather than bend over backwards to change the institution to accommodate women, as the U.S. military has done, VMI has done an admirable job of maintaining its tough standards and attracting motivated women who are willing to meet those standards. Yet VMI has also faced many of the same challenges as the military, such as trying to resolve the contradiction of stressing total unit cohesion between genders while simultaneously stressing the dangers of sexual harassment. And though the arrival of women has not brought about the destruction of VMI that its defenders once predicted, many cadets still feel that something important has been lost — some unique quality that motivated 18 year-old boys to forgo four years of

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the frat-boy life for four years of discipline and sacrifice. As one male cadet told Brodie at the end of the first year of coeducation:

> What I think has been lost . . . are the intangibles about the school which, in my opinion, a lot of males were attracted to the Institute for. . . . It was just a feeling of 1,300 brothers. . . . [B]eing all-male, we all had something special in common, a bond among men that was electric, that created that atmosphere. This year I have found that to be undetectable in those same situations. There was, I feel, a notable distraction among the fourth class [first-year cadets] this year, which I attribute directly to the presence of the opposite sex. . . . And it may be in a very tiny way, but certainly in a very real way [this distraction] has inhibited this class's ability to fully absorb . . . what it means to be a VMI cadet, what it means to be a VMI graduate, what it means to be a VMI person.

Aside from its troubling implications for national security, our experiment with a "gender-neutral" military may be more significant as the ultimate test of the flimsy pillars on which feminism stands: The belief that men and women are interchangeable and equally capable of doing every job; that they can always work together — even in the stressful conditions and close proximity of military life — and keep sex "compartmentalized" on the side; that our notions of manliness and femininity are merely malleable "social constructs"; and that (with the help of technology) biology truly is not destiny.

Feminists once argued for equal treatment: Women should have the chance to work in the same jobs, with the same pay and responsibilities as their male colleagues. And for most professions, this isn't problematic; hardly anyone these days is disturbed by the idea of a female doctor or lawyer. But the military is an altogether different case, for here the feminist project runs up hard against the limits of biology and human nature. Thus it is faced with a tactical choice: To achieve the level of female representation they deem acceptable, feminists have two options. The first is to "feminize" the institution and make it more conducive to women (i.e., by lowering standards), which has been the case with the U.S. military. (This approach correlates nicely with the dovish ideology of most feminists, who have long seen the placement of women into combat roles as a perfect way to dilute the masculine military's supposedly insatiable lust for war.) The second option is to make women more like men to fit into the male institution, which has mostly been the case at VMI.

Are either of these approaches really tenable? The first option clearly harms military readiness. Gutmann believes it may take an embarrassing military defeat to awaken most Americans to this reality, but once they do awaken it's hard to believe they will continue to tolerate the feminization of the armed forces. The second approach isn't much better, since it doesn't seem likely that many women will find long-term happiness trying to be more like men. But that doesn't stop the efforts to convince them otherwise.

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Brodie relates the testimony of many female VMI cadets struggling to reconcile two seemingly contradictory goals — to blend into the predominantly male culture and support the conformity that they acknowledge military life requires, while trying to maintain some sense of femininity. One female cadet, defending the prevailing desire among VMI's women to be judged under the same fitness standards as the males, said, "This is VMI, where the men are men and so are the women." Another tells Brodie that "I don't know whether I want to be feminine for the outside world, or whether I want to be tough for VMI. I don't know which world I need to live up to. . . . There's no middle, either." Said another: "We have to prove the point that we can be here and be mean. We are not little girly-girlies."

If the experience of the women who appear in these books is any indication, encouraging women to act more like men entails emulating not only the positive aspects of male life, but the coarser ones as well. Gutmann says that many military women feel compelled to cuss and spit along with the boys in order to fit in, and notes that female officers "held up their end quite respectably in the 'drunkenness, debauchery, and vulgarity' department" at the old Tailhook conventions. Likewise, Brodie describes how VMI females striving to feel a greater sense of inclusion participate in cadet "pileons" and other acts of adolescent male roughhousing — not exactly what the original women's movement had in mind.

It's important to remind ourselves that the controversy over women in the military isn't new at all. Indeed, Plato anticipated the current debate over two millennia ago in the *Republic*. In Socrates's perfectly just city, women were to learn the arts of war and fight alongside the men, since justice demanded the distinction between the sexes be considered no different than that between bald men and men with hair. But this utopian city could only exist in speech, for its realization (as Socrates details) would require a radical assault on human nature: the utter destruction of marriage, the home, the privacy and sanctity of the family, and the relations of parent and child, even to the point of tolerating incest.

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A costly war on human nature is also what today's attempt at full integration of women into the military requires, for as these books show, no matter how hard we try to ignore it, human nature finds ways to stubbornly reassert itself. This may explain why the New Military feels the need to desensitize male pilots in POW training

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to the screams of their female colleagues, lest the natural inclination of honorable men to spare women from suffering be used by their captors to make them talk; or why there is still an ineffable reluctance among most middle-aged male officers to order 20 year-old females into harm's way; or why male soldiers inevitably still show more concern for a fallen female comrade than a male one; or why, as Gutmann notes, military women aren't exactly flocking to fill the combat jobs now being opened to them.

Not long ago, our nation shuddered at the sight of dead American troops being dragged through the streets of Mogadishu. Now we seem unfazed by the thought of sending young women off to gruesome death in combat, which suggests that perhaps we have lost the ability to discern the true reasons why we fight any war. For women have always embodied those reasons — from stolen Helen at Troy, to the Betty Grable pinup photos and sensual female images on warplanes in World War II. The willingness of men to fight and die in wars for women (rather than alongside them) is not a paternalistic expression of women's inferiority, as feminists would have us believe. Rather, it affirms the superiority of the good life which women represent in any decent society — of home and hearth, of children and future generations, of beauty and love. Men have always been the ones to fight, but it was ultimately women who provided the purpose. Now we are blinded to these truths by utopian dreams of a sterile, androgynous future, and the future price of this blindness will almost certainly be measured in American lives lost.

The *Times* of Our Times

By Woody West

Susan E. Tifft and Alex S. Rose. *The Trust: The Private and Powerful Family Behind the New York Times*. Little, Brown and Co. 870 pages. $29.95

It is unlikely there will be another American newspaper with the prestige and influence of the *New York Times*. Indeed it was unlikely that there would be such a journalistic Alp at all when Adolph S. Ochs, with $750 to his name and a pile of debt, managed to buy the foundering paper in 1896.

In the twilight of the nineteenth century, New York City was robustly on its way to becoming the second largest metropolis in the world. In the newspaper arena, William Randolph Hearst's *New York Journal* fiercely competed with Joseph Pulitzer's *New York World*, bringing "yellow journalism" to its brightest hue. Thus, to survive, the so-called quality papers — among them Charles A. Dana's *Sun* and James Gordon Bennett Jr.'s *Herald* — could not ignore the bizarre, the shocking, and the improbable. On August 18, 1896, the day the 38-year-old Ochs formally took over the sick *New York Times*, the *Sun* featured "Body Sent to

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Morgue," the story of a man who had barely escaped being embalmed alive, along with a straightfaced news report headlined "A Fish that Plays the Piano." The *Herald*, not to be outdone, led with "Wife Uses a Whip," the tale of an adulterous millionaire who had been thrashed by his spouse in Atlantic City.

Susan Tifft and Alex S. Rose in *The Trust* sketch this newspaper climate in New York as Ochs, owner of a debt burdened Chattanooga newspaper, became proprietor of the *New York Times*. His audacious initiative inaugurated a century of family ownership of what is generally regarded as America's premier newspaper. *The Trust* is not an analytical account of how the *New York Times* ascended to eminence, suitable for graduate journalism seminars. The subtitle portrays the book's theme: "The Private and Powerful Family Behind the *New York Times*." In large part, the book is a prodigiously reported exercise in what might be called the higher gossip. It is a lively tale writ large of the turbulence that appeals to the transom-peeper in most of us.

It is also a history that can't be repeated. Family owned newspapers have gone the way of the dime pay phone. The corporate chains that have gobbled them up — Gannett is the hungriest shark in the sea, and the *Chicago Tribune*'s recent purchase of the *Los Angeles Times* makes it a very large fish looking for smaller fish to swallow — are themselves newspapers perhaps destined to become vestigial before the cyber-century is old enough to shave.

"Journalism" in the Information Age will be defined in a fashion radically different from that of the traditional trade, even as television in the post-World War II years drastically changed the newspaper business. In what may be a fascinating devolution, the figure of "the journalist" could soon come to be symbolized by that freebooting pioneer, Matt Drudge — an individual with a laptop operating without institutional tether on the Internet, rattling the cage of a geriatric establishment. The behemoths will mutate, even as they are busy doing with websites and reportorial updates on-line, and the big byte boys doubtless will launch more such ventures as Bill Gates's online *Slate*. Whether the wondrous technology that is propelling this transformation will conduce to a better informed citizenry of the republic — well, that dough is still rising.

ADOLPH SIMON OCHS, the paterfamilias of the *Times*, was a man of relentless ambition and personal diffidence. Born in 1858, the son of German Jewish immigrants, he grew up between contending force fields: His father, Julius, a "dreamy and accommodating man," was an abolitionist who served in the Union army; his mother, Bertha, was as formidable as an avalanche and so passionate a supporter of the Confederacy that she was arrested for smuggling quinine to rebels across the Ohio River from Cincinnati during the Civil War.

That Adolph had to navigate between this domestic Scylla and Charybdis makes understandable his lifelong avoidance of confrontation. What became the credo of the *New York Times* — "to give the news impartially, without fear or favor" — might have been a way of taming the contending viewpoints he grew up

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between, as well as a general disavowal of journalistic prejudice. In a time when newspapers were usually organs of or closely aligned with political factions, the declaration of ideological neutrality would serve the newspaper well.

The biography of Adolph Ochs is what we like to think of as an American life, and it is emblematic of the possibilities this country historically has offered. He went to work at age 11 to help his hard-pressed, large family. His engaging personality and maturity advanced him rapidly from office boy to printer's devil to journeyman printer and reporter on Knoxville and Louisville papers. When his father failed to account for a sizable sum as an insurance agent, the family's possessions were mortgaged. The disgrace "had a transformative effect on Adolph," write Tifft and Rose. Adolph went partners, his share on "sweat equity," to start a paper in Chattanooga. The enterprise promptly failed, but Adolph regrouped and created the *Daily Times* there in 1878. With little more than loose change as capital, Ochs resorted to creative financing as well as commercial sleight of hand now and then, a practice typical of the era — and one that he would continue in New York. He met Iphigenia Miriam Wise, "Effie," while on a newsprint buying trip to Cincinnati. Her father was a rabbi and founder of Reform Judaism in America; though he was skeptical about an alliance between his daughter and an "obscure printer," they were married in 1883.

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Ochs was so mired in debt with his Chattanooga paper that he was practically a pauper. "So it was all the more remarkable that as his situation became more and more desperate, Adolph decided to dig himself out not only by acquiring another newspaper in order to generate income but by acquiring a newspaper in New York," write Tifft and Rose. "With his back against the wall — a position that always invigorated him — he determined to own a paper in the biggest, most competitive and sophisticated market in the country."

The *New York Times*, a paper established as a conservative counterpoise to Horace Greeley's *Tribune*, was sliding toward bankruptcy. With Western populism swelling, investors in the failing enterprise were eager to continue a conservative journal. Ochs, hearing of this situation, packed his bag for New York and set out to convince stockholders that he was capable of keeping the foundering ship afloat. "Now for the supremacy of gall for a country newspaper man burdened with debt!" he wrote to Effie.

He engineered a partnership in 1896

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that would award him a majority stock interest if the company under his management showed a profit for three consecutive years. He fudged sales figures, played a wily game of bob-and-weave in promotion, and in a desperate tactic slashed the paper's price to one cent from three cents. Remarkably, by the end of 1898, his cleanly printed paper with its "elevated tone" had become a "paragon of respectability." It was selling 60,000 copies a day, then over 90,000 at the start of the new century. Revenues gained commensurately. Four years after taking over, the controlling stock of the *New York Times* belonged to Adolph Ochs.

Ochs consistently put profits back into the paper and earned a reputation for journalistic reliability and objectivity. "The blank impersonality of the *New York Times* conformed to his philosophy of good journalism; it also gave him a curtain behind which he could labor in relative safety. What Hearst, Pulitzer, and Bennett sought was money, political power and notoriety; what Adolph sought was admiration."

As a peaceful transfer of power defines a stable polity, so does effective succession affect an institution. But Ochs procrastinated and dithered. His two obvious journalistic heirs were the man who had married his only child, Iphigene, Arthur Hays Sulzberger, and his nephew, Julius Ochs Adler. The eventual choice of his son-in-law did not produce amity among the extended family — a pattern that would repeat itself. Ochs then created a trust that would insure that ownership of the newspaper would remain within the family (even after it would be taken public, decades later). The "trust" of the title obviously refers both to the stock agreement and to the family's sense of obligation to the institution.

Iphigene was rather a spoiled little rich girl, but one with a good head. Over the decades she would become the de facto power behind the editorial throne, her husband the (often resentful) operating generalissimo of the *New York Times*. Arthur Hays Sulzberger was, not to put too fine a point on it, a monster (the reviewer's judgment, not the authors'). He treated Iphigene with contempt, often denigrating her in front of others. A womanizer, he flaunted his extracurricular tootsies, especially a decades-long dalliance with British actress Madeleine Carroll, blatantly inviting her to the family estate, Hillandale, with his wife present.

The powerful editor was as callous in his treatment of the couple's son, Arthur Hays Sulzberger Jr., the only boy among three sisters. Born with a learning disability, "Punch," as he would always be known, had a ragged school life. His father's interests were not his, nor did Arthur Sr. spend much time with his presumed successor. In 1943, the teenager "impulsively" left the prestigious Loomis School and enlisted in the Marine Corps. "Punch was aware that his life up to that point had been a series of failures and disappointments," and his success at Parris Island (as the recruit platoon's top marksman) "boosted his battered self-confidence." His father, however, unknown to Punch, colluded with Gen. Douglas MacArthur and the young Marine was attached to the general's staff as a "gofer." Though he was never told how the noncombatant transfer came about, Punch had his suspicions.

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Reticent as he was, it would be 10 years and a few drinks before he would confront the senior Sulzberger — "and exploded with full force at his father," to the horror of guests who were present. "I never really forgave him," said Punch of the humiliating paternal intrusion.

Adolph S. Ochs had died in 1935, and Arthur Hays Sulzberger Sr. was presiding over the most consequential newspaper in the most powerful nation in the world as Germany and Japan were defeated and the Cold War began. He walked with presidents and the political barons of America. The newspaper was both admired and reviled by those in power; it could not be ignored. Though Punch was the newspaper's Prince of Wales, his father largely left him to shift for himself in learning the business. After a crunching competition within and among nonfamily executives, Punch Sulzberger was named to succeed his father as publisher.

The New York Times *remains a dominant newspaper. It does a good many things well. But the trust in its reporting felt by many national leaders and readers for so long, close to ex cathedra reverence, is far more conditional now.*

PUNCH'S STEWARDSHIP was a capable one — surprising to those within and outside the family who expected little of him. The four-star editors and high-octane columnists during his and his father's tenure constitute a roster of admired newspapermen, among them Arthur Krock, James Reston, Turner Catledge, Max Frankel, and Abe Rosenthal. Authors Tifft and Rose fully reprise the years and the personalities in a smooth narrative, recounting the paper's successes and failures: the Bay of Pigs scoop that wasn't published; the Pentagon Papers; the uncritical coverage of and editorial support for Fidel Castro (curiously, the authors make no mention of reporter Walter Duranty's shilling for Stalin during the 1930s, exculpating the dictator from responsibility for the appalling famine he induced). Punch eased Ochs cousin John Oakes from his editorship of the editorial page, which Oakes had moved too far left of Punch's more traditional centrism, and began new "lifestyle" sections that thickened both the paper and its income.

The most recent transition of power was also less than graceful, from Punch to his son, Arthur Ochs Sulzberger Jr. As with his own father, Punch had not been especially close to his son. If a shaping influence in the father's life was in the Carolinas at Marine boot camp, his son's was also in the Carolinas — at an Outward Bound camp, a sort of "Jungle Gym" for privileged youth. It was a "defining experience," Arthur Jr. would say. This was perhaps fitting for a child of the 1960s, demonstrating

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against the Vietnam war and developing a reputation as "doctrinarilly anti-business." He also would discover his Jewishness in these years, in a family which had never paid particular attention to its heritage. But his goal since childhood had been to succeed his father, and he learned the trade as a reporter away from the family paper.

Back at the *Times* and training to perch at the top of the pole, Arthur Jr. was distinctly left of center, a cocky and confrontational young man. As he moved toward the seat of power, his stepmother, Carol, adamantly opposed him, not wishing to relinquish the status and influence she exercised as the publisher's wife. She considered Arthur Jr. "an arrogant phony." Finally, in 1992 and after another round of bruising infighting of a kind not unfamiliar in great institutions, the young man was named his father's successor.

In the years since, the newspaper has reflected a consistently leftist editorial policy under Arthur Jr.'s choice for editor of that page, Howell Raines, and devoted a much higher portion of its news columns to "soft" news. Its journalistic perspective has delighted the constituencies for dramatic social change in a race-class-gender mode. Indicative of where Arthur Jr. would take the *Times* is that shortly before his coronation and while negotiating a contract with the Newspaper Guild, he tried to finesse a "same-sex" benefits provision without telling his father. Punch scuttled the maneuver when he learned of it, but the issue was consonant with his son's vision for the institution.

The *New York Times* remains a dominant newspaper. It does a good many things well. But the trust in its reporting felt by many national leaders and readers for so long, close to ex cathedra reverence, is far more conditional now.

AUTHORITY, IN A WORD finally, was what the family ownership of the *New York Times* represented in the century of ownership, now being carried on in the fourth generation. As potent media proprietors, the family operated as gatekeeper — that is, one of the small number of sentinels who judged what was "news" at a given moment, who determined what fads and trends passed a cultural taste test and were therefore worthy of public discussion.

The revolution still accelerating through the "communications" universe has already atrophied the role of authority and the function of gatekeeping. To be sure, the quality with which either has been exercised over this century has been uneven, to put it mildly — almost wholly dependent on the character and judgment of the individuals involved. Which is to say, the power of the gatekeepers has been hierarchical, not consensual. And we have come increasingly to think of consent as indispensable in legitimizing power.

Wherever this radical transformation in information technology eventually takes us, it will make "authority" and "gatekeeping" almost hilariously superfluous. The demotic tidal wave that the Internet represents will wash over pillars of institutional judgment as if so many sand castles. There is in such a prospect a tincture of the anarchic, but that tincture seems destined always to seep into the crevices of a society that has become ever more democratic and egalitarian, less republican and del-

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egative in its forms.

There certainly will be men and women of vast wealth who will control the new engines of information. Bill Gates is a conspicuous horse early out of the chute. They will also have power of a magnitude that we perhaps would rather not think about at the moment. But it is hard to imagine any of them creating new media dynasties with the authority of the Ochs-Sulzberger clan, nor its gatekeeping function. Everyone with a computer and the wit to go online has the means to reject any such claims — which is to say, the power to transform gatekeeping itself into a consensual relationship.

The Surprising Roots of Fascism

By Arnold Beichman

A. James Gregor. *The Two Faces of Janus: Marxism and Fascism in the Twentieth Century.* Yale University Press. 256 pages. $30.00

Janus was the Roman god after whom January is named. He was considered the guardian deity of gates and doors and is usually shown as two-faced, since doors face both ways. But there is only a single body to this deity. Berkeley Professor A. James Gregor, in his superbly researched book, has presumably selected Janus to symbolize the twinning of the two ideologies that have so scarred the twentieth century.

Gregor has undertaken a difficult task in his attempt to deal with these two ideologies. I say difficult because while the ultimate consequences of Marxism were dreadful, there was at least a large collection of patristic writings, accessible and debatable, even intellectually respectable. Because Marxism provides a self-styled scientific socio-political analysis as well as a gallimaufry of beliefs and insights, it appealed to intellectuals and, alas, still does.

Not so with fascism, a name derived from the Latin, "fasces," a bundle of sticks, carried by judicial officers in Roman processions as an emblem of authority. (Hitler, of course, had his own emblem — the swastika — and his followers referred to themselves as Nazis, short for National Socialism.) Fascism had its theoreticians, and a distressing number of serious thinkers, the philosopher Martin Heidegger first among them, lent their support. But fascism in actual fact it had no intellectual basis at all, nor did its founders even pretend to have any.

Hitler's ravings in *Mein Kampf*, Giovanni Gentile's hortatory article in the Italian Encyclopedia, Mussolini's boastful balcony speeches, all of these can be described, in the words of Roger Scruton, as "an amalgam of disparate conceptions." It is about this "amalgam" that Professor Henry Ashby Turner Jr. has written:

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> Anyone who reads many studies of fascism as a multinational problem cannot but be struck by the frequency with which writers who begin by assuming they are dealing with a unitary phenomenon end up with several more-or-less discrete sub-categories. Regardless of what criteria are applied, it seems very difficult to keep fascism from fragmenting.
>
> In spite of this, there has been a general reluctance to consider what must be regarded as a definite possibility: namely, that fascism as a generic concept has no validity and is without value for serious analytical purposes. . . . The generic term fascism is in origin neither analytical nor descriptive.

That such strictures have significance can be seen in Professor Gregor's confirming remark about the Russian extremist politician, Vladimir Zhirinovsky: "In what sense Zhirinovsky is a fascist is difficult to say with any intellectual conviction."

Yet Gregor is right to ignore the Turner finding, for one important reason: "Fascism" still has meaning in democratic societies. For a recent illustration of this, consider the fracas over Austria's Jörg Haidar. Labeling somebody you don't like a "fascist" is still a popular polemical sport: Call someone a communist and proof is demanded and even when proof is supplied there is the risk that you will be called a red-baiter; call someone a fascist, that's enough to convict. In the lexicon of the left, there is nothing lower than a "red-baiter" but there is no such thing as a "fascist-baiter." We've all heard about "communist hysteria," especially during the Joe McCarthy years, but there is no such phenomenon as "fascist hysteria." The name-calling got a little ridiculous when during the Sino-Soviet split, the Kremlin and Beijing called each other fascist.

Having combed their literature, Professor Gregor has shown beyond a shadow of doubt the affinities, too long ignored, between fascism and Marxism-Leninism. (It was Don Luigi Sturzo who provided the reductio ad absurdum: Fascism was black communism and communism was red fascism.) Richard Pipes has written that "Bolshevism and fascism were heresies of socialism."

Recalling that Mussolini began his political career as a distinguished Italian socialist, Gregor writes: "Fascism's most direct ideological inspiration came from the collateral influence of Italy's most radical 'subversives' — the Marxists of revolutionary syndicalism."

Even Nikolai Bukharin, the leading Soviet ideologist whom Stalin purged, began to have misgivings about the Revolution and began to allude to the fascist features of the emerging system. Gregor writes:

> By the early 1930s, the 'convergence' of fascism and Stalinism struck Marxists and non-Marxists alike. . . . By the mid-1930s, even Trotsky could insist that 'Stalinism and fascism, in spite of deep difference in social foundations, are symmetrical phenomena' . . . .
>
> Fascist theoreticians pointed out that the organization of Soviet society, with its inculcation of an ethic of military obedience, self-sacrifice and heroism, totalitarian regulation

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of public life, party-dominant hierarchical stratification all under the dominance of the inerrant state, corresponded in form to the requirements of Fascist doctrine.

Left liberals have frantically denied the "Janus" notion that Marxism-Leninism and fascism have a common origin. With scholarly skill and an enormous amount of reading has Professor Gregor made such denials as dated as the *Communist Manifesto*.

Nearer My God To Me

By Damon Linker

Alan M. Dershowitz. *The Genesis of Justice: Ten Stories of Biblical Injustice that Led to the Ten Commandments and Modern Law*. Warner Books. 273 pages. $25.95

That the pursuit of perfect justice tends to produce its own injustice is a paradox of political life as pervasive as it is intractable. Is it "just" that any one of us may be killed at any moment by a random act of criminal violence? Of course not. Yet we realize that insulating ourselves from this possibility would require us to accept the greater injustices that accompany life in a police state. Or is it "just" that the state sometimes arrests and charges, and even occasionally tries and convicts, citizens for crimes they didn't commit? Of course not. Yet we understand that holding the government to impossibly high standards of procedural purity would result in the greater injustice of allowing large numbers of the guilty to elude punishment.

However plain this truth, there have always been those whose zealous love of justice has led them to pursue it at all costs. Alan M. Dershowitz is perhaps the exemplary figure in the American manifestation of the trait, and we all have to live with the consequences of his calling. Every time evidence establishing a murderer's guilt is excluded from trial due to the slightest of irregularities in how it was obtained by the police; every time an attorney raises unreasonable doubts in a jury's mind in order to win an acquittal for his guilty client; every time a guilty man's conviction is overturned on appeal because of (as Dershowitz himself puts it at one point in his new book) "unrelated matters" — we all have to live with the consequences of his call to absolute moral exactitude.

Dershowitz's crusade against prosecutorial imperfection has always been unrelenting. In his numerous books and endless talk show appearances, in his popular classes at Harvard University Law School, and in his ferocious defense of high-profile clients from Claus von Bülow to Mike Tyson and O.J. Simpson, he has proven himself the most powerful legal advocate of the libertarian left — those true believ-

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ers for whom securing the release of the guilty from prison, often on the basis of legalistic technicalities, is itself a mark of righteousness. As Dershowitz writes with some sanctimony, though it may be "distressing when the guilty go free," it is "a price we must be willing to pay for assuring that the innocent are only rarely convicted."

Aside from supporting the ACLU in its crusade to rid the public sphere of any vestige of religious sentiment, Dershowitz and his ideological brethren usually have very little to say about spiritual matters, lacking as they do reverence for higher powers (in which many of them avowedly do not believe). To be sure, Dershowitz fancies himself something of an authority on contemporary American Judaism and has taken up the subject from time to time in his voluminous writings. But when it comes to his professional project, which one might characterize as obstructing justice in the name of justice, he has tended to limit himself to the alleged transgressions of temporal authorities. In this sense, then, *The Genesis of Justice* represents a change, or at least marks the moment at which the "chutzpah" Dershowitz has long proclaimed for himself has finally reached metaphysical proportions. For in his new book, Dershowitz mounts a challenge to the justice of none other than God Himself.

Now, to be fair, it must be said that Dershowitz denies at the outset of the book that he intends his interpretation of 10 stories from the Book of Genesis to be construed as an attack on the veracity of the scriptural text. (As has become typical among partisans who wish to appear nonpartisan, he claims to take no "position on the 'truth' " and to make "no claim of being 'right.' ") More remarkable still is his admirable capacity to convey his genuine love of the classic tales he examines from the first book of the Pentateuch.

And yet, to say that Dershowitz looks at the Bible with a critical eye would be a considerable understate-

The clear implication is that contemporary Americans (or at least those who share Dershowitz's own liberal convictions) are more morally developed than the God described in Genesis.

ment. In the first 50 pages of his book, he manages to accuse God of violating "human norms of fairness," promulgating the first sexual "double standard," being the first "misogynist" in history, paving the way for an "inequality that would endure for millennia," issuing commands that "defy reason" and "human nature," acting with indifference to whether actions are done "for good or for evil," and, last but not least, engaging in "genocide." Indeed, Dershowitz's "favorite interpretation" of Scripture (of course, not the "right" or "true" one) is that "God Himself was still learning about justice

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and injustice" at the time of the Creation and the events described in the early chapters of the Old Testament. The clear implication is that contemporary Americans (or at least those who share Dershowitz's own liberal convictions) are more morally developed than the God described in Genesis.

DERSHOWITZ'S irreverence with regard to the divine is certainly not original to him. After all, we live at a time in which thoroughly secular histories of religion are commonplace and in which some (like the author Jack Miles) have even attempted to write "biographies" of God.

Moreover, the moral objections Dershowitz raises against the Biblical text are familiar ones. He even admits that he first encountered many of them while studying the Talmud in an Orthodox Jewish day school in the 1940s and '50s.

Still, Dershowitz's approach to the Bible is unusual in at least two respects. First, his interpretations are animated by an uncommon moral fervor. In the book's amusing opening chapter, he tells us about how, even as a child, he refused to accept the traditional, edifying responses to the moral objections he learned in school. Although his teachers tried to keep him firmly within the faithful fold by walking him through the disputations contained within the ancient rabbinical commentaries, the young Dershowitz preferred to "ask impertinent questions that got me tossed out of class." It seems that the young moralist loved justice more than piety or tradition. And he has pursued the consummation of that love ever since, even as it has led him to leave the established teachings of his faith far behind, to find in the most sacred text of his religion little more than an account of how human beings originally suffered under the despotism of a holy tyrant who violated human "rights" and set "a terrible example for lawmakers that has, unfortunately, been followed throughout history." From the beginning, Dershowitz's theological concerns have been inspired by the conviction that God should have been sophisticated enough from the time of the Creation to see the need to institute "an agreed-upon and enforceable code of conduct" exactly like the one found in modern America.

But Dershowitz's method of Biblical criticism is noteworthy in another respect as well. Far from being a simple moralist, he is also, to the depths of his soul, a courtroom lawyer. And like many courtroom lawyers, he is motivated to a considerable extent by vanity — by the desire to be admired and recognized for his considerable rhetorical prowess. He is driven, in other words, by a passion for public victory, regardless of how far he has to go to get it. It is thus little wonder to learn that the hero of *The Genesis of Justice* is the obscure Rabbi Levi Yitzchak, an eighteenth century Hasidic master Dershowitz twice praises with impish glee for having had the temerity to file "a religious lawsuit (a din Torah) against God for breaking His covenant with the Jewish people." The greater the stakes, the greater the potential thrill of success.

It is a powerful mixture: a love of perfect justice; a proficiency with logical argument; and an insatiable desire to prevail over one's opponent. The

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result is a man who will do anything to win his case — even if, as his colleague Johnnie Cochran showed with such skill in his notorious closing arguments in the O.J. Simpson trial, doing so requires appealing to the least laudable prejudices of the judge and jury.

In a trial of the Old Testament's God conducted in the United States at the end of the twentieth century, there are many such prejudices to which Dershowitz can, and does, appeal. In fact, on many matters, the Hebrew Bible and modern Americans begin from conflicting premises. We are convinced, for example, that democracy is the best (nay, the only legitimate) form of government, while the Torah shows a decided preference for human patriarchy and divine authoritarianism. We believe in the existence of innate individual rights, while the God of Abraham, Isaac, and Jacob seems not to recognize or respect the inherent dignity of His creation (at least not consistently). We now hold it to be self-evident that men and women are fundamentally equal, while the Old Testament tells a different story, one in which the latter are usually made subservient to the former. And perhaps most fundamentally, we tend to prize autonomy of thought and action above all else, while the Bible teaches a very different lesson — namely, that a man's righteousness is measured by the extent of his willingness to submit to spiritual authority.

Given these very different assumptions, it is little wonder that Dershowitz is able to make the 10 stories on which he focuses in his book appear to be ridiculous. After all, how could a just God flood the world, thereby killing every human being aside from Noah and his immediate family? According to what standard of justice was it appropriate for God to demand Abraham to sacrifice Isaac? And what moral principle made Abraham's willingness to comply with the murderous command worthy of praise? From the standpoint of our common opinions about justice, these and the other examples Dershowitz adduces from throughout Genesis seem to be incidences of barbarism rather than models for moral emulation — the kind of actions that inspire us to impose economic sanctions, send "peacekeeping" troops, or hurl "smart bombs" when they are committed by governments instead of the Deity. But of course Dershowitz doesn't just leave it at reminding us of the troubling details of the old, familiar stories. For each, he builds a powerful case against the actions (or inactions) of God, almost persuading us that He deserves to be convicted on the charge of conduct unbecoming the Creator of the Universe. Almost.

One need not be an orthodox Jew, Christian, or Muslim to see that Dershowitz's treatment of the Bible is far from fair — that by using contemporary liberal notions of justice as a club with which to batter the text, he ends up doing little more than confirming his own unquestioned moral prejudices. Dershowitz begins by assuming he has nothing to learn from the Bible, and thus assures he will never truly be challenged to rethink his position — a position that is of course completely at odds with the view of the human and the divine contained in the Old Testament.

Any open-minded encounter with

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Genesis, by contrast, reveals that the Torah could only be thought of as a (failed) treatise of moral philosophy through an act of willful distortion. It would be far more accurate to say that the Bible presents us with an ethics in the widest sense of the term — an ethos, a comprehensive way of life for human beings in which justice and morality play an important part but can by no means be equated with the whole. It is the nonmoral or amoral dimensions of the text to which Dershowitz is blind and to which his method does considerable violence.

For Dershowitz, God's prohibition against eating the fruit of the tree of the knowledge of good and evil must (like all of God's actions) be evaluated by "human standards" of justice.

Take his handling of the story of the Fall. For Dershowitz, God's prohibition against eating the fruit of the tree of the knowledge of good and evil must (like all of God's actions) be evaluated by "human standards" of justice. Once we have done so, we can clearly see that God's commandment "defies reason," since the quest for knowledge has turned out to be the "engine of human progress" and subsequent history has shown that it is "entirely natural" and even "pleasant" for individuals to seek knowledge. It is thus obvious to Dershowitz that "God's first action as a lawgiver seems unfair." And what monster, he wonders, would punish someone for violating an unjust law? In this way, Dershowitz thinks he can win the acquittal of the human race for original sin.

The truth, of course, is that the story of the Fall (like that of the Tower of Babel, or the admonitions of St. Paul) teaches us something wholly at odds with the humanistic, rationalistic, and aggressively secular tradition to which Dershowitz belongs. What the Bible teaches is that knowledge is the source of human suffering, regardless of how "natural" it might be or how much "progress" it promises to grant us. Along with the pagan myths of Pandora and Prometheus, the Bible teaches that "he that increaseth knowledge increaseth sorrow" (Eccl. 1:18). It teaches that human beings have an innate need for obedience to a mysterious God who refuses to be judged by human standards of justice or hemmed in by a demand for the rational transparency of His actions and decrees. It teaches, in other words, that "the fear of the Lord is the beginning of wisdom" (Prov. 1:7; Prov. 9:10; Ps. 111:10; Job 28:28; Deut. 6:13).

For this teaching, Dershowitz has nothing but contempt — a contempt that comes bubbling to the surface of his commentary whenever he mentions the Book of Job, with its lesson that our happiness depends upon accepting without doubt or question the inscrutable ways of the Lord, even when the most heartbreaking acts of injustice befall us. Dershowitz either

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dismisses this teaching as "unthinking fundamentalism" or passes over it in silence. In fairness, humble obedience comes hard to most of us, as do the profound sacrifices of the intellect and ego, of our hopes for earthly pleasures and perfection, that the Bible demands. But recognizing our own inability or unwillingness to meet the challenge posed to us by Scripture is quite a different thing from refusing to see that challenge for what it is.

The stance toward the divine in *The Genesis of Justice* is adversarial through and through, and the truth is the God in its pages isn't capable of putting up much of a fight. Judging from the laudatory quotations contributed to the dust jacket of the book by leading figures in the legal and religious communities on both sides of the political spectrum, many of our contemporaries apparently find nothing particularly objectionable in Dershowitz's approach. Which is to say, for the class of moderns to which Dershowitz belongs and which harbors the conviction of its own omniscience, God is interesting mainly as a primitive, morally inept version of itself.

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LETTERS

Medical Marijuana Works

SIR, — James R. McDonough's attack on medical marijuana ballot initiatives comes as no surprise, coming as it does from a politically appointed drug bureaucrat dedicated to regulating what kinds of drugs Americans can take ("Marijuana on the Ballot," April/May 2000).

My own perspective is different, having personally spoken to hundreds of seriously ill patients who find that marijuana affords unique relief from chronic, debilitating, intractable disorders. Many not only have been denied legal access to medicine, but also have been arrested, prosecuted, and incarcerated at taxpayers' expense for trying to use marijuana. It was for these reasons that I helped organize California's medical marijuana initiative, Proposition 215, which was approved by 56 percent of the electorate.

McDonough disapproves of the voters' judgment on various grounds, saying that there is insufficient proof of marijuana's efficacy, that this is a decision that should be made by FDA bureaucrats, and that smoking is at any event an unacceptable way to take medicine.

There is no point quibbling over the scientific evidence for medical cannabis. In fact, there have been scores of studies showing medical benefits from smoked marijuana, even though there have not been the kind of expensive, controlled clinical trials required for FDA approval — largely because the government has blocked them. McDonough himself concedes that the ingredients in marijuana have therapeutic potential and proffers the distant hope that someday a non-smoked version will be approved by the FDA.

Unfortunately, however, this fails to address the needs of those patients who can benefit from marijuana now. FDA approval is a notoriously lengthy and expensive process that has been rightly criticized for delaying access to drugs. Meanwhile, many patients are in immediate distress from pain, nausea, and spasms that can only be relieved by smoking marijuana. This salient fact, ignored by McDonough, was explicitly recognized by the Institute of Medicine, which despite its misgivings about smoking, stated, "We acknowledge that there is no clear alternative for people suffering from chronic conditions that might be relieved by smoking marijuana, such as pain and AIDS wasting."

As for the dangers of smoking — to be sure, better methods of cannabis administration, such as smokeless vaporizers, need to be developed. In the meantime, however, given that patients are perfectly free to smoke tobacco, which is indisputably dangerous and harmful, why should they be prohibited from smoking marijuana when their physicians deem it beneficial?

A fundamental defect of current FDA regulation is that it denies patients access to medicine that they need. Some time ago I wrote in these pages that consumers should have the right to informed choice in medicine independent of FDA approval ("The FDA's Bad

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Medicine," Summer 1985). Philosophically, the FDA system is an excrescence of Progressive and New Deal liberalism, based on the inherently flawed, constitutionally dubious assumption that government bureaucrats should dictate what drugs Americans are allowed to take. Proposition 215 was based on the opposite view, that the right to medicine is retained by the people.

Californians knew well what they were doing when they approved Proposition 215. Campaign surveys found that over 30 percent of voters personally knew someone who used marijuana for medicine. Armed with this public support, the supposedly "well financed" Proposition 215 campaign succeeded with only a modest budget of $2 million — less than what the government spends *every hour* in its war against pot.

Thanks to the passage of Proposition 215, over 10,000 Californians are now using medical marijuana legally with the support of their physicians. Contrary to the predictions of opponents, surveys indicate that teen marijuana use in California has not increased since passage of 215, and is even below the national average.

As for the supposed "chaos" created by Proposition 215, this is a direct consequence of the government's own stubborn refusal to reform its bankrupt laws against medical marijuana in accordance with constitutional principles of states' rights.

For lack of legally approved alternatives, many patients have perforce turned to clubs and coops for their medicine. Clubs have established a respectable reputation in many communities, openly cooperating with local authorities to assure distribution to legitimate patients. When the federal government filed suit to close down six clubs in Northern California, city officials in Oakland, San Francisco, and elsewhere intervened in support of the clubs. Their efforts were rewarded with a pathbreaking, unanimous decision from the Ninth Circuit Court of Appeals, blocking the federal government from prohibiting marijuana distribution to patients with medical necessity.

To be sure, not all Proposition 215 patients are in dire medical need. But so what if some only use marijuana to relive backaches or premenstrual stress? If adults find marijuana makes them feel better, why on earth should U.S. taxpayers be wasting their dollars to deny them their God-given rights to life, liberty, and the pursuit of happiness?

DALE GIERINGER
Coordinator, California NORML
San Francisco, Calif.

SIR, — James R. McDonough's article confuses the relationship between science and politics. At most, scientists can tell us the risks and benefits of marijuana use. The question, though, of whether smoking marijuana is "an appropriate delivery system" is a political rather than a scientific matter. The same goes for whether or not marijuana should be legalized.

Consider Mr. McDonough's main argument against smoking marijuana, namely, that it delivers carcinogens just like smoked tobacco. Ergo, since we are waging a war against tobacco, we should do the same against marijuana. Let us not be too hasty, though, in assuming that science is driving the war

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against smoking. The input from science on this issue is rather limited — smoking has ill effects, but smoking can have therapeutic effects especially in the case of marijuana. The political issue, on the other hand, is much graver: Are we are going to treat people as capable of choosing whether or not to smoke (in light of the scientific evidence) or as incapable of making such decisions. Very clearly, we have opted for the latter. I believe we have done so because we have bought the argument that smokers are suffering from an addictive disease that renders them incapable of making informed choices. This argument does not come from science but from a scientific community that has its own interests to advance, namely, the control of tobacco and marijuana products. Not surprisingly, the eventual outcome of the tobacco war will be that smokers will have to go to doctors to obtain prescriptions for cigarettes. Keeping marijuana off the ballot helps ensure that the medical community will maintain control of it also.

This is why smoked marijuana is so attractive. Those who are ill or who simply want it for recreational use don't have to genuflect before some government official or physician to obtain it. They can grow it themselves, avoiding both expensive clinic visits and therapeutic paternalism.

Mr. McDonough fits right in with so many students of public policy — enamored with the scientific community, they are unable to distinguish real science from the larger political principles that ought to be protecting individual liberties.

MICHAEL REZNICEK M.D.
Lewiston, Idaho

SIR, — I'm appalled that an upstanding conservative organization such as *Policy Review* would publish such an article as James R. McDonough's. You claim to support limited government and individual freedom, yet you espouse the flimsy rationale that medical marijuana is medically unsound. This logic supports the arrest and incarceration of sick and dying people. Yet even in Florida, the author's home state, the state medical association has endorsed the rescheduling of medical marijuana. Is criminal punishment of ailing people good medicine? Certainly prison time is more detrimental to one's health than letting anyone (healthy or ill) inhale cannabis smoke.

A point that seems to be missed is that the ballot initiatives that have passed do not circumvent the proper process. They are in fact attempting to take control of medical matters away from law enforcement and place it back into the hands of the medical community.

Also, this article is grossly misleading. McDonough has used the words of several proponents of medical marijuana to bolster his politically motivated agenda. Both Dr. Jerome P. Kassirer of the *New England Journal of Medicine* and Dr. Lester Grinspoon of Harvard University support letting doctors treat patients with marijuana when medically appropriate.

It is far from a certain conclusion that smoked marijuana (although vaporization is a viable alternative) is not medicine. Many prestigious organizations support the decriminalization or legalization of marijuana for medical use: the House of Lords Science and Technology Committee, the Finnish Medical Association, the California

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Medical Association, the Austrian Medical Association, the Israeli Health Ministry, as well as the New England Journal of Medicine, to name just a few.

Compassion should be the paramount concern when dealing with people in every area of society — especially medicine.

RICHARD W. JONES
Jackson, Miss.

Farmers and Food Prices

SIR, — One line near the end of Victor Davis Hanson's article "Tall Tales from the Family Farm" (April/May 2000) particularly stuck in my mind. "There is no money in growing harvests, but a great deal in packaging them, and selling them."

I believe there are reasons for why this is true that relate to agribusiness and the "myths" ascribed to it. There is no money is growing harvests mainly because agribusiness has not yet fully succeeded in vertically integrating this part of our food production process. Corporations are more than willing to let farmers fight over scraps they toss out to them, and farmers seem to be fully willing to play their part in the corporate plan.

When vertical integration is complete, meaning that corporations fully own the means of growing harvests as well as the other aspects they already control, we will begin to see that there is a great deal of money to be made in growing harvests. It could only be poor planning by corporations if this did not come to pass.

Thus I agree that agribusiness does not threaten our food supply. But it does threaten the still relatively low cost of this commodity. When production is controlled by the few instead of the many, we will find food to be a much more precious item.

CLIFF COPASS
Greenfield, Wisc.

LETTERS TO THE EDITOR

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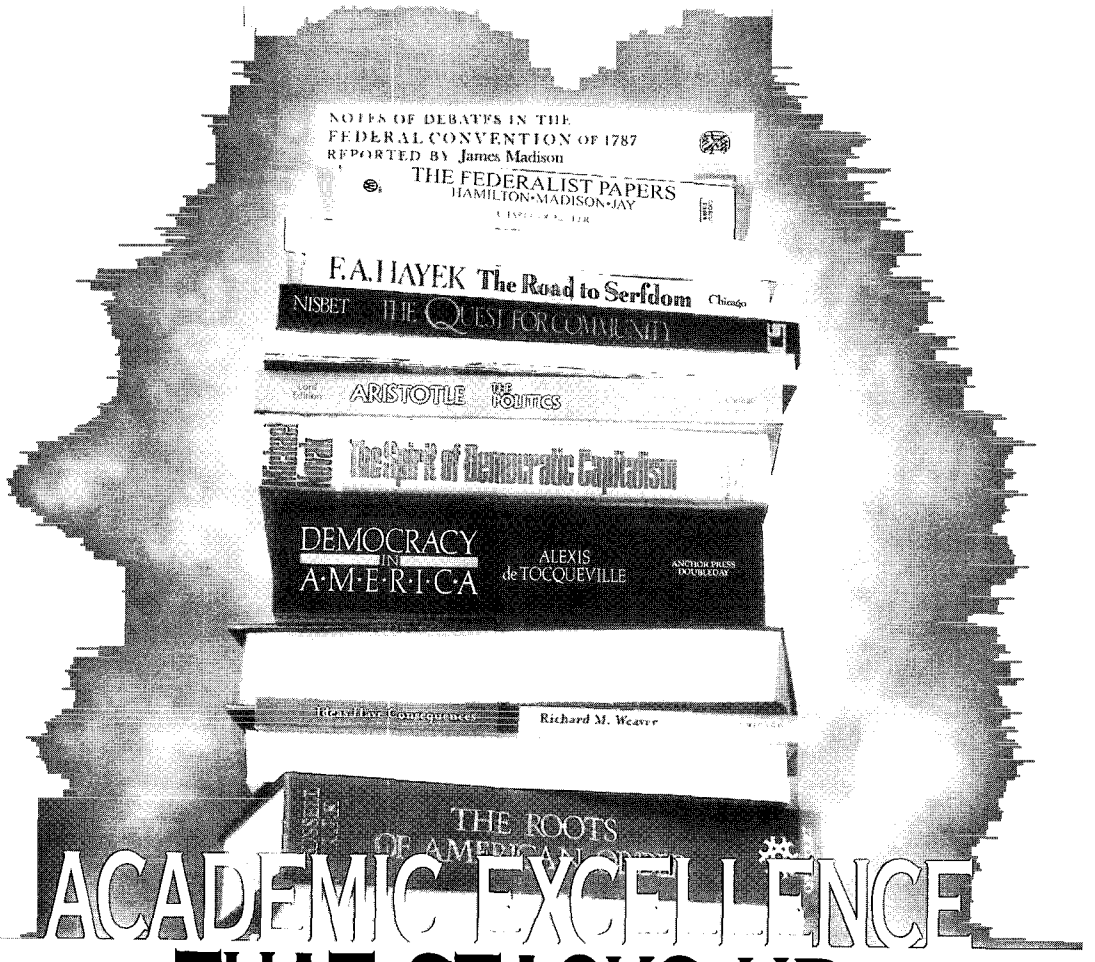
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